AGENDA

9:00 a.m. – March 19, 2019
State Capitol, Room 126

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11. AB 582 (Patterson) Ms. Uribe Vehicle accidents: fleeing the scene of an accident.
12. AB 597 (Levine) Mr. Fleming Probation and mandatory supervision: flash incarceration.
13. AB 603 (Melendez) Mr. Pagan Firearms: retired peace officers.
15. AB 611 (Nazarian) Mr. Billingsley Sexual abuse of animals.

VOTE ONLY

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<td>AB 137 (Cooper)</td>
<td>Mr. Billingsley</td>
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VOTE TO GRANT RECONSIDERATION

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<td>Mr. Billingsley</td>
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Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.
SUMMARY: Requires a law enforcement agency to indicate in an incident report if the underlying incident is a “hate crime” or “hate incident.” Specifically, this bill:

1) Requires a law enforcement agency’s informational, incident, and crime reports to include a checkbox indicating whether the underlying incident in the report is a hate crime or hate incident, actual or perceived.

2) Provides that a law enforcement agency shall complete, for each hate crime or hate incident, a supplemental hate crime or hate incident report form that indicates the type of bias motivation and any other identifying information to assist in the prosecution of the hate crime or hate incident.

3) Defines “bias motivation” as a preexisting negative attitude toward actual or perceived immutable characteristics, as defined.

4) Defines “hate crime” to mean a criminal a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics.

5) Defines “hate incident” to mean an incident that has a bias motivation but does not meet the threshold of a hate crime.

6) Makes legislative findings and declarations regarding the underreporting and escalation of hate crimes in California.

EXISTING LAW:

1) Defines “hate crime” as “a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics.” (Pen. Code, § 422.55, subd. (a).)

2) Requires all state and local agencies to use the above definition when using the term “hate crime.” (Pen. Code, § 422.9.)

3) Specifies that “hate crime” includes a violation of statute prohibiting interference with a person’s exercise of civil rights because of actual or perceived characteristics, as listed
above. (Pen. Code, § 422.55, subd. (b).)

4) Mandates the Commission on Peace Officer Standards and Training (POST) to include a law enforcement training course that, among other things, provides instructions on law enforcement procedures, reporting, and documentation of hate crimes. (Pen. Code, § 13519.6, subds. (a) & (b).)

5) Requires POST to develop a framework and possibly a general order or formal policy regarding hate crimes that all state law enforcement agencies must adopt. The elements of the framework shall include, among other things, a title-by-title specific protocol that agency personnel are required to follow regarding reporting. (Pen. Code, § 13519.6, subd. (c)(4)(E).)

6) Provides that POST must encourage local law enforcement agencies to adopt any such policies. (Pen. Code, § 13519.6, subd. (c).)

7) Directs the Department of Justice (DOJ) to collect, analyze, and make publicly available, information related to criminal statistics. (Pen. Code, § 13010, subds. (a), (c), & (g).)

8) Requires the DOJ to direct, subject to the availability of adequate funding, local law enforcement agencies to report information related to hate crimes to the DOJ in a manner so prescribed. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required by statute. (Pen. Code, § 13023, subd. (a).)

9) Mandates that on or before July 1 of each year, the DOJ shall update the Open Justice Web portal with the information obtained from local law enforcement agencies pursuant to this section. The department shall submit its analysis to the Legislature, as specified. (Pen. Code, § 13023, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 300 would require every law enforcement agency’s incident and crime report to include a check box indicating whether the case at hand is a hate incident or hate crime. A hate incident is defined as an incident that has a bias motivation but does not meet the threshold of a hate crime, whereas a hate crime means a criminal act committed based on a victim’s actual or perceived characteristics (see Section 422.55 of the Penal Code for the compete definition of hate crime). Noting this detail is very important because having accurate information will help to address the problem.

"Additionally, the bill would require that for each hate incident or hate crime, the law enforcement agency will need to complete a supplemental report that specifies the type of bias motivation and other information relevant to the hate incident or hate crime. Indicating whether the victim’s race, gender, ethnicity, sexual orientation, or religious belief played a role in the hate incident or hate crime will aid in the prosecution of the case.

"According to a 2015 Census Bureau report, California is the second most-diverse state in the United States. We pride ourselves in leading the charge to decry hate and provide equal protections for all Californians. AB 300 would insure that if a hate incident or hate crime
does occur, our local enforcement agencies are equipped with the tools to report them and gather the necessary information to prosecute such cases.”

2) Need for Revision of Hate Crime Reporting Policy: According to the DOJ’s 2016 report, *Hate Crimes in California*, the total number of hate crime events (an occurrence when a hate crime is involved) decreased 34.7 percent from 2007 to 2016. Filed hate crime complaints decreased 30.5 percent from 2006 to 2015.

However, in the past few years hate crime events in California have been back on the rise; there was a 10.4 percent rise from 2014 to 2015, and then another 11.2 percent rise from 2015 to 2016. The total number of hate crime events, offenses, victims, and suspects had all increased in 2016. (<https://openjustice.doj.ca.gov/resources/publications> [Feb. 1, 2018].)

In both its 2015 and 2016 reports, the DOJ lists the same four possible factors that may adversely influence the volume of hate crimes reported: [1] cultural practices of individuals and their likeliness to report hate crimes to law enforcement agencies; [2] strength and investigative emphasis of law enforcement agencies; [3] policies of law enforcement agencies; and [4] community policing policies. (<https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/hatecrimes/hc15/hc15.pdf?> [Feb. 1, 2018].)

Under current law, local law enforcement agencies are required to report hate crimes to DOJ when appropriate funding is available. (Pen. Code, § 13023.) According to its 2015 report, “The DOJ requested that each law enforcement agency establish procedures incorporating a two-tier review (decision-making) process. The first level is done by the initial officer who responds to the suspected hate crime incident. At the second level, each report is reviewed by at least one other officer to confirm that the event was, in fact, a hate crime.” (<https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/hatecrimes/hc15/hc15.pdf?> [Feb. 1, 2018].)

This bill would require each law enforcement agency in the state to include a checkbox on the front page of each information report or crime report face sheet indicating whether the incident was a suspected hate crime. This may aid local law enforcement agencies in flagging reports for the two-tiered analysis requested by DOJ for reporting hate crimes. The policy change would arguably address the third factor influencing the volume of hate crimes reported—i.e., it would implement a statewide policy designed to better ensure that a hate crime gets accurately reported as such.

3) Argument in Support: According to the *Jewish Public Affairs Committee of California*, “The Jewish Public Affairs Committee of California (JPAC) is pleased to support AB 300 (Chu), which will improve the accuracy of hate crimes and incidents. Specifically, it would require specific reports from law enforcement agencies in California to include a checkbox indicating whether the case at hand is a hate crime or incident. AB 300 would also require law enforcement agencies to complete a supplemental report that specifies the type of bias motivation and other relevant information for each hate crime or incident.”

4) Argument in Opposition: The *California State Sheriffs’ Association* writes “It is unclear that the information sought by this bill is not already being reported pursuant to existing law.
AB 300 appears to mainly add a new step to crime reporting undertaken by law enforcement with no clear goal. The details of a report are likely to discuss the presence of bias and whether or not the incident is a suspected hate crime, as appropriate, and it is unclear how adding a check box will bolster hate crime reporting or shed new light on already reported information.”

5) Prior Legislation:

a) AB 1757 (Weber and Chu), of the 2017-18 Legislative Session, was similar to this bill and would have required the first page of a law enforcement crime report or information sheet to reflect whether the incident was related to a hate crime. AB 1757 was held on the Assembly Appropriations Committee suspense file.

b) AB 158 (Chu), of the 2017-18 Legislative Session, would have required the Commission on Peace Officer Standards and Training (POST) to develop statewide hate crime reporting guidelines to be implemented by all law enforcement agencies, as specified. AB 158 was on the Assembly Committee on Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Defamation League
Center for the Study of Hate & Extremism - California State University, San Bernardino
Equality California
Hindu American Foundation, Inc.
Jewish Public Affairs Committee
The Sikh Coalition

Oppose

California State Sheriffs' Association

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

AB 397 (Chau) – As Introduced February 6, 2019

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Motor Vehicles (DMV) to include in a yearly report to the Legislature the number of arrests made involving driving under the influence of cannabis. Specifically, this bill:

1) Requires each law enforcement agency having traffic law enforcement responsibility to report to the Department of Justice (DOJ) the number of arrests made during the preceding calendar month for a violation of driving under the influence (DUI) of cannabis, beginning on July 15, 2022.

2) Requires DOJ to develop a form to give to law enforcement to report the above information.

3) Requires DOJ, beginning on or before July 1, 2023, to transmit a summary of the arrest data to DMV in a format and a frequency agreed upon by the departments.

4) Requires DMV, beginning on or after January 1, 2024, to include in a report to the legislature the summary of the arrest data for DUI of cannabis or a combination of cannabis and alcohol or another drug.

EXISTING LAW:

1) States that it is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. (Veh. Code, § 23152, subd. (a).)

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

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

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

5) Requires DMV to establish and maintain a data and monitoring system to evaluate the efficacy of intervention programs for persons convicted of violations of Section 23152 or 23153. (Veh. Code, § 1821, subd. (a).)
6) Requires DMV to submit an annual report of its evaluations to the Legislature. (Veh. Code, § 1821, subd. (d.).)

7) Specifies that the Controller shall disburse the sum of three million dollars annually to the Department of the California Highway Patrol beginning with the 2018–19 fiscal year until the 2022–23 fiscal year to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of cannabis or cannabis products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies. (Rev. and Tax Code, § 34019, subd. (c.).)

8) States that the Controller shall next disburse the sum of two million dollars annually to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center, including the enhanced understanding of the efficacy and adverse effects of cannabis as a pharmacological agent. (Rev. and Tax Code, § 34019, subd. (e.).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "As we have seen in other states that have legalized cannabis, an increase in cannabis drugged driving can almost certainly be expected due to legalization. After legalization the states of Colorado and Washington both experienced an increase in cannabis involved accidents including fatalities, with Washington State experiencing an 81% increase in these accidents, and Colorado experiencing a 145% increase in these accidents between the years 2013 and 2016. Currently cannabis DUI's in the state are charged as ‘driving under the influence of drugs’, without specifying which drug the accused is under the influence of. Because of this, the state currently has no way to determine how many cannabis DUI's occur annually. By adding cannabis as its own subsection to DUI code AB 397 will allow the state to have accurate and reliable data of how many cannabis DUI's occur in the state annually, which will be helpful in assisting the state to come up with an informed policy around cannabis DUIs as we transition into the legalized cannabis market."

2) Proposition 64, The California Marijuana Legislation Initiative: On November 8, 2016, California voters approved the "California Marijuana Legislation Initiative" by 57% of the vote. The initiative was commonly referred to as the Adult Use of Marijuana Act (AUMA).

Prior to the passage of AUMA the possession or use of marijuana for recreational purposes in the State of California was illegal. In 1996, the passage of Proposition 215 legalized medicinal marijuana. Both medical and recreational marijuana use and possession were, and currently are, illegal under federal law.

Proposition 64 allowed adults aged 21 years or older to possess and use marijuana for recreational purposes. The initiative levied two additional new excise taxes, one for cultivation of marijuana and the other on the retail sales of marijuana. The first tax is a cultivation tax of $9.25 per ounce for flowers and $2.75 per ounce for leaves, with exceptions for certain medical marijuana sales and cultivation. The second tax is a 15 percent tax on the retail price of marijuana. These taxes will be adjusted for inflation starting in 2020. Local
governments were authorized to levy taxes on marijuana as well.

Proposition 64 provides a couple of funding streams for CHP to address driving under the influence, including driving under the influence of marijuana. The source of the revenue streams is the money that will be generated by taxing marijuana (The Marijuana Tax Fund). One revenue stream is a fixed amount of $3,000,000 a year for four years starting in fiscal year 2018-2019. That money is for CHP “to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies.” (Health and Saf. Code, § 34019, subd. (c).) The language of Proposition 64 allows CHP to use those funds to hire personnel to establish the protocols for driving under the influence. In addition, the department may make grants to public and private research institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products. (Health and Saf. Code, § 34019, subd. (c).) Proposition 64 provides a second funding stream to CHP from the Marijuana Tax Fund. The money generated by taxing marijuana will go to a variety of entities to ensure effective implementation of the Proposition 64 and to address policy concerns surrounding the use of marijuana. After the mandatory disbursements from the Marijuana Tax Fund are made each year, the remaining money will be disbursed to specified entities on a percentage basis.

3) **Re-designating the Vehicle Code for Statistical Purposes:** The Vehicle Code defines certain driving conduct as criminal. The language of the Vehicle Code is intended to communicate what behavior is criminal in a manner that is clear, concise, and comprehensive. The language of the California Codes has not traditionally been structured in such a manner to make distinctions between crimes purely for the purposes of data collection. For example, Penal Code Section 245, subd. (a)(1) criminalizes assault with a deadly weapon. The language of that section does not separate and list each possible deadly weapon that could be used in an assault. The code does not list every conceivable deadly weapon, because use of broader language, which encompasses a variety of weapons, provides sufficient clarity in a concise manner.

4) **Current law defines DUI as driving under the influence of alcohol, driving under the influence of drugs, or driving under the influence of the combined influence of alcohol and drugs:** The Vehicle Code prohibits driving under the influence of any drug, but does not make an effort to list each drug. To list each drug separately would be cumbersome and complicated.

As introduced, this bill would separate out cannabis, from the general category of drugs that could cause someone to be too impaired to drive. The introduced version of this bill includes findings and declarations which state that the purpose of this bill is to separate the offense of DUI with cannabis from other DUI offenses for statistical purposes only.

If the Legislature stratifies the vehicle code on DUI to separate cannabis, would it make sense to further stratify the vehicle code in the future to address other drugs the Legislature might be concerned about? There are also policy concerns surrounding the opioid epidemic. Would it make sense to create separate DUI crimes for each opioid? What about other drugs that might become a concern in the future?
There is understandable interest in gathering data on DUlIs that are related to cannabis. To the extent that California wants and needs data cannabis related DUI, there are other options available.

5) **Amendments Proposed to be Adopted in Committee:** The proposed amendments would require law enforcement agencies to report monthly to DOJ the number of arrests made for driving under the influence and the number of those arrests in which cannabis was suspected to be the substance, or one of the substances, of which the person was under the influence. The proposed amendments would require DOJ to report that information annually to DMV and require DMV to include that data in its annual report to the Legislature. The proposed amendments delete language which would have separated out DUI of cannabis from other types of DUI.

6) **Argument in Support:** According to *Smart Approaches to Marijuana California*, “As some states pass legislation that normalizes the use of marijuana, we need clear laws about driving under the influence. All states prohibit driving under its influence; however, often legalization occurs before adequate and enforceable laws are in place. Unfortunately, many people still do not perceive that driving after marijuana use is dangerous. The insurance industry is already reporting higher collision claims in states with legal marijuana.

   **Car crashes are among the leading causes of death in the US. (AAA Foundation)**

   Marijuana is the most common drug found in fatally-injured drivers and marijuana presence has increased substantially in the past decade. (GHSA 2018)

   **91.7% of drivers surveyed by AAA Foundation (2013-2015), feel it is unacceptable to drive one hour after using marijuana**

   “The body of science continues to demonstrate that driving under the influence of marijuana is dangerous. In addition, studies show that impaired drivers test positive for multiple substances, when they are tested. But far too many preventable tragedies are linked to marijuana.”

7) **Related Legislation:**

   a) **AB 1731 (Burke),** would make it a crime to drive a car with a blood alcohol concentration (BAC) of .05 or more, by lowering the current limit of .08 BAC. AB 1731 is awaiting referral to a policy committee.

   b) **AB 127 (Lackey),** would allow a person who is under the supervision and on the property of the California Highway Patrol, to drive a vehicle while under the influence of a drug, or while under the combined influence of a drug and alcohol, for the purpose of conducting research on impaired driving, and it contains an urgency clause. AB 127 is awaiting committee assignment in the Senate Rules Committee.

8) **Prior Legislation:**

   a) **AB 2058 (Chau),** of the 2017-2018 Legislative Session, would have specified that it is unlawful for a person who is under the influence of cannabis or any cannabis product or
derivative to drive a vehicle. AB 2058 was vetoed by Governor Brown.

b) SB 1273 (Hill), of the 2017-2018 Legislative Session, would have made cannabis-related DUIs a separate offense and requires the suspension of a driver’s license for anyone under the age of 21 who had any cannabis in their system. SB 1273 was held in the Senate Public Safety Committee.

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice
California District Attorneys Association
Smart Approaches to Marijuana California

Opposition

None

Analysis Prepared by:  David Billingsley / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-397 (Chau (A))

Mock-up based on Version Number 99 - Introduced 2/6/19
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to distinguish the offense of driving under the influence of cannabis from other driving under the influence offenses for statistical purposes only.

SEC. 2. Section 23152 of the Vehicle Code is amended to read:

23152. (a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person’s blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or

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more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) Commencing July 1, 2018, it shall be unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense. For purposes of this subdivision, "passenger for hire" means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(f) It is unlawful for a person who is under the influence of any drug to drive a vehicle.

(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.

(h) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 3. Section 23152 is added to the Vehicle Code, to read:

23152. (a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle:

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. In a prosecution under
this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) Commencing July 1, 2018, it shall be unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense. For purposes of this subdivision, "passenger for hire" means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(f) It is unlawful for a person who is under the influence of any drug other than cannabis, to drive a vehicle.

(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug, including cannabis, to drive a vehicle.

(h) It is unlawful for a person who is under the influence of cannabis or any cannabis product or derivative to drive a vehicle.

(i) It is unlawful for a person who is under the combined influence of cannabis and any other drug to drive a vehicle.

(j) This section shall become operative on July 1, 2021.

SEC. 4. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for a person, while under the influence of any alcoholic beverage, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the

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person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after driving.

(e) In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.

(d) It is unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210 and concurrently to do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after driving.

(e) Commencing July 1, 2018, it shall be unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense, and concurrently to do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. For purposes of this subdivision, “passenger for hire” means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after driving.

(f) It is unlawful for a person, while under the influence of any drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(g) It is unlawful for a person, while under the combined influence of any alcoholic beverage and drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(h) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 5. Section 23153 is added to the Vehicle Code, to read:

23153. (a) It is unlawful for a person, while under the influence of any alcoholic beverage, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

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(b) It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after driving.

(c) In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.

(d) It is unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210 and concurrently to do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after driving.

(e) Commencing July 1, 2018, it shall be unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense, and concurrently to do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. For purposes of this subdivision, "passenger for hire" means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle. In a prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after driving.

(f) It is unlawful for a person, while under the influence of any drug, other than cannabis, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(g) It is unlawful for a person, while under the combined influence of any alcoholic beverage and drug, including cannabis, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

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(h) It is unlawful for a person, while under the influence of cannabis or any cannabis product or derivative, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(i) It is unlawful for a person, while under the combined influence of cannabis and any other drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(j) This section shall become operative on July 1, 2021.

SECTION 1. Section 1821 of the Vehicle Code is amended to read:

1821. (a) The department shall establish and maintain a data and monitoring system to evaluate the efficacy of intervention programs for persons convicted of violations of Section 23152 or 23153.

(b) The system may include a recidivism tracking system. The recidivism tracking system may include, but not be limited to, jail sentencing, license restriction, license suspension, level I (first offender) and II (multiple offender) alcohol and drug education and treatment program assignment, alcohol and drug education treatment program readmission and dropout rates, adjudicating court, length of jail term, actual jail or alternative sentence served, type of treatment program assigned, actual program compliance status, subsequent accidents related to driving under the influence of alcohol or drugs, and subsequent convictions of violations of Section 23152 or 23153.

(c) The systems described in subdivisions (a) and (b) shall include an evaluation of the efficacy of the increased level of intervention resulting from the act that added this subdivision.

(d) The department shall submit an annual report of its evaluations to the Legislature. The evaluations shall include a ranking of the relative efficacy of criminal penalties, other sanctions, and intervention programs and the various combinations thereof, including, but not limited to, those described in subdivision (c).

(e) Commencing with the first report submitted on or after January 1, 2024, the report described in subdivision (d) shall include statistical data on the number of arrests for driving under the influence, in which the driver was suspected of being under the influence of cannabis or a combination of cannabis and alcohol or another drug as reported to the department pursuant to Section 23155.

SEC. 2. Section 23155 is added to the Vehicle Code, to read:

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23155. (a) On July 15, 2022, and monthly thereafter, each law enforcement agency having traffic law enforcement responsibility within their respective jurisdiction, including, without limitation, each city police department, county sheriff's department, and the Department of the California Highway Patrol shall, on a form developed by, or in a format prescribed by, the Department of Justice, submit to the Department of Justice the number of arrests made during the preceding calendar month for any violation of subdivision (f) or (g) of Section 23152 or subdivision (f) or (g) of Section 23153 that involved cannabis as the drug, or one of the drugs, of which the arrestee was suspected of being under the influence, as well as the total number of arrests for violations of Sections 23152 and 23153.

(b) On or before April 1, 2022, the Department of Justice shall develop a form, or prescribe a format for the reporting of the data required to be submitted pursuant to subdivision (a).

(c) On or before July 1, 2023, and no less than once annually thereafter, the Department of Justice shall forward a summary of the arrest data obtained pursuant to subdivision (a) to the Department of Motor Vehicles in a format and at a frequency agreed upon by the departments to best effectuate the requirements of Section 1821.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
SUMMARY: Requires that the prosecutor and the victim be given 30-days written notice of a hearing for early termination of probation. Specifically, this bill:

1) Mandates a judge to hold a hearing in open court before early termination of probation.

2) Requires that both the prosecutor and the victim be given 30-days written notice of a hearing for early termination of probation.

3) Provides that the victim may be served with notice of the hearing on early termination by mail.

4) Requires proof of service on the victim to be filed with the court five court days prior to the hearing.

5) Mandates that a victim be given an opportunity to be heard on the decision to terminate probation early.

EXISTING LAW:

1) Establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const. art I, § 28, subd. (b).)

2) Requires victim restitution from adult criminal defendants who have been sentenced by the court in every case in which a victim has suffered an economic loss as a result of the defendant’s conduct. (Pen. Code, § 1202.4, subd. (f).)

3) Defines probation as "the suspension of the imposition or execution of a sentence and the order of conditional release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

4) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

5) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)
6) Authorizes the extension of probation for five years in certain misdemeanor cases, such as driving under the influence. (Veh. Code, § 23600, subd. (b)(1).)

7) Requires a court which grants probation to make the payment of the victim restitution order a condition of probation. (Pen. Code, § 1202.4, subd. (m).)

8) Authorizes the court to revoke, modify, extend, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

9) Authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

10) Prohibits the court from modifying the restitution obligations due to the defendant's good conduct. (Pen. Code, § 1203.3, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 433 will provide victims of crime information and notice of the termination of probation for those who victimized them. AB 433 would provide the prosecuting attorney and the victim be given 30 days' written notice prior to a hearing to terminate probation early. The bill would require proof of service of notice on the victim to be filed with the court 5 court days to the hearing. This will ensure that victims are made aware of the conditions of this termination, and help provide victims further security and peace of mind.

   “Additionally, AB 433 will ensure that victims are made whole, by ensuring their constitutional right to restitution is met. While victims are required to be provided restitution to cover economic losses associated with the victimization, occasions arise where the victim’s losses may not be able to be determined at the time of sentencing. Current law allows for restitution to be revisited, but that must occur prior to the end of probation when the court loses jurisdiction associated with the defender. AB 433 closes this loophole and allows victims the opportunity to have access to this reassessment, guaranteeing this constitutional right is met.”

2) **Jurisdiction to Modify Restitution Order:** In Hilton v. Superior Court (2014) 239 Cal.App.4th 766, the Court of Appeal held that once probation expires, the judge cannot modify a restitution order. In Hilton, the defendant pled to driving under the influence and the court placed him on probation for three years. At a subsequent restitution hearing, the court ordered the defendant to pay $3,000 restitution to the victim, which he did. (*Id. at pp. 769-770.*). The victim then sued the defendant civilly and won $3.5 million. Probation then expired on the criminal case. One year and seven months after probation expired, the victim went back to court and requested that the court could order $886,000 more in restitution, to pay for the costs of the civil suit as well as additional lost wages. The defendant objected based on lack of jurisdiction. (*Id. at 770.*). The Court of Appeal reversed the order, holding that once probation expires, the court loses jurisdiction to modify a restitution order and that any extension of probation was an act in excess of jurisdiction and void. (*Id. at p. 772.*). The court noted that termination of probation occurs by operation of law at the end of the
probationary period. (Id. at p. 773.) The court also held that the language of Penal Code section 1203.3, reflects legislative intent, consistent with pre-existing law on probation, that the trial court lacks jurisdiction to impose restitution once probation expires. (Id. at pp. 775-776.)

People v. Waters (2015) 241 Cal.App.4th 822, agreed with the holding in Hilton. In this case, the court sought to order restitution two years after the probationary period expired, even though the victim impact statement seeking $20,000 was filed before the entry of the plea. (Id. at p. 825.) The court noted that Penal Code section 1202.4, subdivision (f) requires the trial court to order victim restitution unless the trial court finds compelling and extraordinary reasons for not doing so. Regarding jurisdiction, a trial court's power to modify a sentence usually expires 120 days after judgment. (See Pen. Code, § 1170, subd. (d).) (Id. at p. 827.) But there is an exception where victim restitution cannot be ascertained at the time of sentencing and the trial court retains jurisdiction to order restitution. (Pen. Code, § 1202.46.) However, section 1202.46 must be harmonized with the preexisting statutory scheme concerning probation, which limits a trial court’s jurisdiction to modify probation to the term of probation (Pen. Code, § 1203.3, subds. (a), (b)(4).) (Id. at p. 830-831.) Therefore, the court concluded that the trial court lacked jurisdiction to order restitution after the expiration of the defendant’s probationary period. (Id. at p. 831.)

In light of the fact that a court lacks jurisdiction to order or modify restitution after the expiration of a defendant's probationary period, this bill would require 30-days written notice to the prosecutor and to a victim before early termination of probation. However, this approach uses a machete when a scalpel will do. Notably, this bill would delay early termination of probation by 30 days even for victimless crimes.

This approach also fails to consider that some victims would prefer to put the crime behind them. In this respect, some of the rights enumerated in the Victims’ Bill of Rights are not self-executing, but rather, they are exercised upon request of the victim. For example, a victim has the right “To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue.” (Cal. Const. art. 1. § 28, subd. (b)(8).) Likewise, a victim has the right “To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.” (Cal. Const. art. 1. § 28, subd. (b)(12).) From a practical standpoint, unless a victim has asked to be kept informed about the case and provided contact information, it may be impossible to notify him or her because the victim may have moved. As such, it makes more sense to provide notice of a hearing for early termination of probation only in the instances where a victim has so requested.

Additionally 30-days written notice is not necessary to preserve a victim’s right to additional restitution in the cases where restitution could not be determined at sentencing or has not already been modified. Significantly, the victim’s presence at the hearing on early termination is not necessary. The prosecutor can request that early termination be denied on based on the need to address additional restitution claims and that the matter be continued. Arguably what is needed to address the situation in which there may be outstanding restitution claims, is notice to the prosecutor and time for the prosecutor confer with the victim.
Under current law, the prosecutor generally is given two days written notice and an opportunity to be heard before any condition of probation is modified. (See Pen. Code, § 1203.3, subd. (b)(1).) It is unclear why this process would not suffice in the situation this bill seeks to address.

3) **Constitutionally Protected Right to Victim Restitution:** The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. Proposition 8 added article I, section 28, subdivision (b), to the California Constitution, and provided:

"It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

"Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section."


The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law. The amendments, among other things, make clear that a victim is entitled to restitution, expanded the definition of a victim to include a representative of a deceased victim, and gave that representative the ability to enforce a victim's right. (See *People v. Runyan* (2012) 54 Cal.4th 849, 858-859.)

4) **Restitution as a Condition of Probation:** When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).)

The court has broader discretion to order restitution as a condition of probation than it does when a defendant is not granted probation. (*People v. Anderson* (2010) 50 Cal.4th 19, 26-27.) When ordering restitution as a condition of probation, the court is not restricted to directing payment to only those victims as defined in the restitution statute. Additionally, the court can order restitution as a condition of probation even when the losses are not necessarily caused by the conduct underlying the defendant's conviction. Rather than having a causal connection, the restitution condition must only be reasonably related to either the defendant's crime or to the goal of deterring future criminality. (*Ibid; see also People v. Carbajal* (1995) 10 Cal.4th 1114, 1121-1124.)

If part of a restitution order has not been paid after a defendant is no longer on probation, it
remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m)).

1) **Argument in Support:** According to Crime Victims United of California, the sponsor of this bill, "While victims are required to be provided restitution to cover economic losses associated with their victimization, occasions arise where the victim’s losses may not be able to be determined at the time of sentencing. Current law allows for restitution to be revisited, but that must occur prior to the end of probation when the court loses jurisdiction associated with the defender. The challenge is that victims do not have any way of knowing that a defendant may be poised to have their probation terminated early, cutting off any opportunity for revisiting restitution to the victim.

"Under Marsy’s Law, Proposition 9, passed by the voters in 2008, the constitutional amendment and statutory measure provided victims the right to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings. Additionally, it provided victims with the right to be heard, upon request, at any proceeding involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

"Prior to Marsy’s Law’s passage, Proposition 8, passed by California voters in 1982, amended the California Constitution to establish the right of crime victims to receive restitution. Specifically, it provided:

"the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary." (Cal. Const., art. I, sec. 28, subd. (b)).

"Under current law, a trial court is required to order the defendant to pay full restitution to their victim ‘unless it finds compelling and extraordinary reasons for not doing so and states them on the record.’ (Pen. Code, § 1202.4, subd. (f).) Under Penal Code 1202.46, if the economic losses of the victim cannot be ascertained at the time of sentencing, then the court is to retain jurisdiction and modify restitution when the victim’s losses may be determined. Ultimately, the trial court must incorporate the restitution order in the defendant’s conditions of probation. (Pen. Code, § 1202.4, subd. (m)).

"AB 433 seeks to provide victims and prosecuting attorney’s notice prior to a hearing to terminate probation early. For victims, such notice would provide benefits of being made aware that probation and the associated terms that may include prohibition on contact may be void without further action to institute an ongoing protective order. Additionally, the notice would provide the opportunity, where the victim can demonstrate justification for additional restitution to be ordered, for the victim to request that the court to consider additional restitution to cover constitutionally mandated restitution at a level that makes a victim whole based on their losses.”
2) **Argument in Opposition:** According to the *San Francisco Public Defender’s Office*, “Existing law, Penal Code section 1203.3, subdivision (b)(1) already provides that if any term or condition of probation is modified, a hearing must be held in open court before the judge; and the prosecuting attorney must be given a two-day notice and an opportunity to be heard (with a five day advance notice required in the case of certain domestic violence cases.)

“Existing law, California Constitution, article I, section 28, subdivision (b)(7), already provides that the victim is entitled to reasonable notice of all public proceedings, upon request, at which the defendant and the prosecutor are entitled to be present.

“AB 433’s additions requiring a hearing and 30-days’ written notice to both the prosecutor and the victim, as well as proof of notice on the victim filed five days in advance, before the court may even order early termination of probation are not necessary because the victim who requests it is already entitled to notice. If the court or the prosecutor determines it is necessary to give that notice, or desirable when the victim has not requested that notice, the hearing can be continued for that purpose. In most cases, however, the victim has not requested notice, and often notice to a victim who has not requested it, is also not desirable.

“The burden that AB 433 demands is obvious: extra steps and delay, even when neither is necessary nor desirable.

“AB 433’s requirements can also be counterproductive. Often, when early termination of probation is contemplated, this is for pressing reasons such as an imminent job transfer, military reasons, or sudden illness of a distant family member. Additionally, the defendant may have exhibited good conduct and reform, where probation is no longer imperative as their debt to society has thus been repaid. The 30-day delay will, therefore, often defeat the interest of justice by imposing an unreasonable barrier to a rightfully earned order. Lastly, if the prosecutor is dilatory in giving the victim notice (we rarely want the defendant to contact the victim), further unnecessary delay ensues.”

3) **Related Legislation:** AB 445 (Choi) authorizes the Victim Compensation Board to compensate a crime victim for attorney costs associated with exercising rights under Marcy’s Law. AB 445 will be heard by this Committee today.

4) **Prior Legislation:**

a) AB 194 (Patterson), of the 2017-2018 Legislative Session, would have extended the court’s jurisdiction for purposes of amending a restitution order for five years after sentencing or until the defendant is no longer on probation or mandatory supervision, whichever is longer. AB 194 failed passage in the Senate Public Safety Committee.

b) AB 2477 (Patterson), of the 2015-2016 Legislative Session, would have overturned case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. AB 2477 failed passage in this Committee.
REGISTERED SUPPORT / OPPOSITION:

Support
Crime Victims United of California (Sponsor)
California District Attorneys Association

Oppose
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
San Francisco Public Defender's Office

Analysis Prepared by:  Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: March 19, 2019
Counsel: David Billingsley

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

AB 439 (Mark Stone) – As Introduced February 11, 2019

SUMMARY: Eliminates references to developmental centers in the statute governing incompetency to stand trial of minors to make the statute consistent with current law regarding the use developmental centers. Specifically, this bill:

1) Removes developmental centers from the list of alternatives to juvenile hall that the court is directed to consider when the court finds a minor incompetent to stand trial.

2) Deletes language which states that existing law does not authorize or require the placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services (DDS) without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act.

3) Contains an urgency clause.

EXISTING LAW:

1) States that notwithstanding any other law, the State Department of Developmental Services (DDS) shall not admit anyone to a developmental center unless the person has been determined eligible for services, as specified, and the person is any of the following: (Welf. & Inst., § 7505, subd. (a).)

   a) An adult committed by a court to Porterville Developmental Center, secure treatment program, found mentally incompetent that has been determined by a regional center to have a developmental disability;

   b) Committed by a court to the acute crisis center at Fairview Developmental Center, or the acute crisis center at Sonoma Developmental Center, due to an acute crisis, as specified;

   c) An adult committed by a court to Porterville Developmental Center, secure treatment program, as a result of involvement with the criminal justice system, and the court has determined the person is mentally incompetent to stand trial;

   d) A person committed by a court on or before June 30, 2021, to Canyon Springs Community Facility due to an acute crisis, as specified; or

   e) A person on a provisional placement as specified.
2) Specifies that under no circumstances shall DSS admit a person to a developmental center after July 1, 2012, as a result of a criminal conviction or when the person is competent to stand trial for the criminal offense and the admission is ordered in lieu of trial.

3) States that if the court has a doubt that a minor who is subject to any juvenile proceedings is competent, the court shall suspend all proceedings and proceed pursuant to this section. (Welf. & Inst., § 709, subd. (a)(1).)

4) Specifies that if a minor is incompetent if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her. (Welf. & Inst., § 709, subd. (a)(2).)

5) States that unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor’s lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor is incompetent. (Welf. & Inst., § 709, subd. (b)(1).)

6) States that if the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals, or his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and shall provide the court with a written report informing the court of his or her determination. (Welf. & Inst., § 709, subd. (b)(7).)

7) Specifies that an expert’s opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst., § 709, subd. (b)(8).)

8) States that the statute governing juvenile incompetency proceedings shall not be interpreted to authorize or require either of the following (Welf. & Inst., § 709, subd. (b)(9).):

a) The placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act; and

b) Determinations regarding the competency of a minor by the director of the regional center or his or her designee.

9) Specifies that upon a finding of incompetency, the court shall refer the minor to services designed to help the minor attain competency, unless the court finds that competency cannot be achieved within the foreseeable future. The court may also refer the minor to treatment services to assist in remediation that may include, but are not limited to, mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent. Service providers and evaluators shall adhere to the standards stated in this
section and the California Rules of Court. (Welf. & Inst., § 709, subd. (c).)

10) States that services shall be provided in the least restrictive environment consistent with public safety, as determined by the court. A finding of incompetency alone shall not be the basis for secure confinement. The minor shall be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody prior to the expiration of the total remediation period, as specified. (Welf. & Inst., § 709, subd. (c).)

11) States that if the minor is in custody, the county mental health department shall provide the court with suitable alternatives for the continued delivery of remediation services upon release from custody as part of the court’s review of remediation services. The court shall consider appropriate alternatives to juvenile hall confinement, including, but not limited to, all of the following (Welf. & Inst., § 709, subd. (g).):

a) Developmental centers;

b) Placement through regional centers;

c) Short-term residential therapeutic programs;

d) Crisis residential programs;

e) Civil commitment;

f) Foster care, relative placement, or other nonsecure placement; or

g) Other residential treatment programs.

12) Requires the court to hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program, within six months of the initial receipt of a recommendation by the designated person or entity. (Welf. & Inst., § 709, subd. (h)(1).)

13) Provides that if the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetency and secure confinement shall not exceed specified limits. (Welf. & Inst., § 709, subd. (h)(3).)

14) States that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The court may invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, the probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. (Welf. & Inst., § 709, subd. (h)(4).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement**: According to the author, "In 2012, there was a statutory moratorium placed on developmental center admissions, and there are currently no provisions for the admission of a minor to a developmental center or to a state-operated community facility. AB 439 removes language from Welfare & Institutions Code section 709 to clarify that Developmental Centers are not a potential placement option for juveniles with developmental disabilities."

2) **Current Juvenile Competency Standards and Procedures**: Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. An adult defendant is mentally incompetent to stand trial "if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367.) While those same factors would be considered in evaluating the competency of a minor, the court would also consider the minors developmental maturity. (Welf. and Inst. Code, § 709, subd. (a)(2).) Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone (Timothy J. v. Superior Court, 150 Cal.App.4th 847 (2007)). The current statute governing juvenile competency procedures was revised by AB 1214 (Stone), Chapter 991, Statutes of 2018.

3) **Developmental Centers**: The Department of Developmental Services (DDS) currently operates three State developmental centers which are licensed and certified as General Acute Care hospitals with skilled nursing and intermediate care facility/intellectual disability services. [https://www.dds.ca.gov/DevCtrs/](https://www.dds.ca.gov/DevCtrs/)

According DDS, the primary mission of the developmental facilities is to provide 24-hour habilitation and treatment services for residents with developmental disabilities designed to increase levels of independence, functioning skills, and opportunities for making choices that affect a person's life including the identification of services and supports and options for transition into the local community.

A person-centered planning approach is utilized, involving the resident and the parents or other appropriate family members or legal representatives, developmental center and regional center staff, to identify and meet service and treatment needs of the residents. Services are designed to include activities that involve all aspects of daily living including residential services through skill training, specialized medical and dental health-care, physical/occupational/speech therapies and language development, to leisure and recreational opportunities. In addition, residents under age 22 attend school either in the community or in developmental center classes. Adults participate in a wide variety of vocational and skill-development programs both at the developmental center and/or in the local community. (Id.)

4) **This Bill is a Follow Up for AB 1214 (Stone), Chapter 991, Statutes of 2018**: AB 1214 revised the procedures to determine the mental competence of a juvenile charged with a crime. AB 1214 contained language which included developmental centers on the list of alternatives to juvenile hall that the court is directed to consider when the court finds a minor incompetent and must refer the minor to services designed to help the minor attain competency.
AB 1472 (Budget Committee), Chapter 25, Statutes of 2012, was a budget trailer bill which reduced California’s reliance on developmental centers, locked mental health facilities ineligible for federal financial participation and out-of-state placements. AB 1472 limited placement of minors found to be incompetent to stand trial to one developmental center, Porterville, secure treatment center. SB 82 (Committee on Budget and Fiscal Review), Chapter 23, Statutes of 2015, eliminated the option to send incompetent minors to Porterville.

This bill eliminates references to developmental centers in the statute governing incompetency to stand trial of minors to make the statute consistent with current law regarding the use developmental centers.

5) **Argument in Support:** According to the *California State PTA*, “Current law requires a court, if it has a doubt that a minor who is subject to any juvenile proceedings is competent, to suspend all proceedings. Upon suspension of proceedings, current law requires the court to appoint an expert, as specified, to evaluate the minor. Current law states that these provisions do not authorize or require the placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or the director’s designee, that the minor has a developmental disability and is eligible for services, as specified. This bill would delete the statement that the provisions above do not authorize or require the placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or the director’s designee, that the minor has a developmental disability and is eligible for services.”

6) **Prior Legislation:**

a) AB 1214 (Stone), Chapter 991, Statutes of 2018, revised the procedures to determine the mental competence of a juvenile charged with a crime.

b) AB 935 (Stone), of the 2017-2018 Legislative session, would have revised the procedures to determine the mental competence of a juvenile charged with a crime. AB 935 was vetoed by Governor Brown.

c) AB 689 (Obernolte), of the 2017-2018 Legislative Session, would have revised the procedures to determine the mental competence of a juvenile charged with a crime. AB 689 was held on the Assembly Appropriations Committee Suspense File.

d) SB 82 (Committee on Budget and Fiscal Review), Chapter 23, Statutes of 2015, eliminated the ability to send minors who are incompetent to stand trial to specified developmental centers.

e) AB 1472 (Budget Committee), Chapter 25, Statutes of 2012, placed restrictions on who could be admitted to a Developmental Center.

f) AB 2212 (Fuentes), Chapter 671, Statutes of 2010, provides that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a
rational as well as factual understanding, of the nature of the charges or proceedings against him or her.

REGISTERED SUPPORT / OPPOSITION:

Support

California PTA

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Authorizes the California Victim Compensation Board (board) to compensate a crime victim up to $2,500 for the costs of attorney fees to preserve any of the victim’s rights under Victims’ Bill of Rights enumerated in the California Constitution (also known as Marsy’s Law).

EXISTING LAW:

1) Establishes the board to operate the California Victim Compensation Program (CalVCP). (Gov. Code, § 13950 et. seq.)

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

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

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

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

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

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

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

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

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

   h) Funeral or burial expenses. (Gov. Code, §§ 13957, subd. (a) & 13957.5, subd. (a).)
4) Limits the total award to or on behalf of each victim or derivative victim to $35,000, except this award may be increased up to $70,000, if federal funds for that increase are available (Gov. Code, §§ 13957, subd. (b), & 13957.5, subd. (b).)

5) Entitles a crime victim to the following rights:

   a) To be treated with fairness and respect be free from intimidation, harassment, and abuse;

   b) To be reasonably protected from the defendant and persons acting on behalf of the defendant;

   c) To have the safety of the victim and his or her family considered in fixing bail and release conditions for the defendant;

   d) To prevent the disclosure of confidential information or records to the defendant or his or her attorney, as specified;

   e) To refuse an interview, deposition, or discovery request by the defendant or his or her attorney;

   f) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest, the charges filed, the determination extradition, and, upon request, to be notified of and informed before any pretrial disposition of the case;

   g) To reasonable notice of all public proceedings;

   h) To be heard, upon request, at any proceeding,

   i) To a speedy trial and a prompt and final conclusion of the case;

   j) To provide victim impact information to the probation department for purposes of sentencing recommendations;

   k) To receive, upon request, the pre-sentence report;

   l) To be informed, upon request, of the conviction, disposition and scheduled release of the defendant;

   m) To restitution;

   n) To the prompt return of property when it is no longer needed as evidence;

   o) To participate in the parole process, and to be notified, upon request, of the release of the offender;

   p) To have the safety of the victim, the victim’s family, and the general public considered before any parole or other post-judgment release decision is made; and,
q) To be informed of the rights. (Cal. Const., art. I, § 28, subd. (b).)

6) Provides that restitution order can include payment of “Actual and reasonable attorney’s fees and other costs of collection accrued by a private entity on behalf of the victim.” (Pen. Code, § 1202.4, subd. (f)(3)(H).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “AB 445 seeks to eliminate a loop hole existing in Marsy’s Law. This bill will provide the resources for victims to retain attorney services that were previously delineated and adopted as part of Marsy’s Law. Where currently the right for a victim to have an attorney is provided under Marsy’s Law, there is no funding provided for such legal services. Therefore, many victims are not able to benefit from this constitutionally provided right. AB 445 assists crime victims by providing the legal representation needed regardless of their financial background.”

2) **Victims’ Bill of Rights:** In November 2008, California voters passed Proposition 9, also known as the “Victims' Bill of Rights” or “Marsy’s Law.” These rights are now delineated in Article I, section 28, subdivision (b) of the California Constitution. They include, among other things, the right to reasonable notice of all public proceedings, to be heard at the proceedings, to restitution, to participate in the parole process, and to be informed of the release of the defendant. *(Ibid.)*

All the rights under Marsy’s Law are not self-executing; victims must assert some of them. However, the victim need not be represented by counsel to do so. The victim, a retained attorney, a representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights in any trial or appellate court with jurisdiction over the case as a matter of right.

To help crime victims navigate through the system, and to exercise their rights, many district attorney’s offices have established a victim services division. (See e.g., Los Angeles County <https://da.lacounty.gov/victims>; San Francisco <https://sfdistrictattorney.org/victim-services>; Riverside County <http://rivcoda.org/openems/victimwitness/index.html>; San Diego <https://www.sdcda.org/helping/victims/victim-services.html>; Sacramento County <http://www.sacda.org/helpingvictims/victim-witness/>; Del Norte County <http://www.co.del-norte.ca.us/departments/district-attorney/victim-witness>; Butte County <https://www.sdcda.org/helping/victims/victim-services.html>; and Tulare County <http://www.da-tulareco.org/victim_witness.htm>.) The Attorney General’s Office also has a victims’ services unit. (https://oag.ca.gov/victimservices) In addition, the California Department of Corrections has an Office of Victim & Survivor Rights & Services to help guide victims through the offender-release process. (See https://www.cdcr.ca.gov/Victim_Services/) Thus, there are readily-available public resources to advocate on behalf of the victim.

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

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

<table>
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<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted Beginning Balance</td>
<td>85,759</td>
<td>86,789</td>
<td>78,614</td>
<td>64,692</td>
<td>41,023</td>
</tr>
<tr>
<td>Revenues</td>
<td>50,000</td>
<td>47,749</td>
<td>49,964</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Expenditures</td>
<td>122,092</td>
<td>105,439</td>
<td>91,993</td>
<td>92,158</td>
<td>92,224</td>
</tr>
<tr>
<td>Net Revenue</td>
<td>($25,659)</td>
<td>($18,262)</td>
<td>($13,992)</td>
<td>($23,669)</td>
<td>($23,735)</td>
</tr>
<tr>
<td>Fund Balance</td>
<td>60,100</td>
<td>68,527</td>
<td>64,692</td>
<td>41,023</td>
<td>17,288</td>
</tr>
</tbody>
</table>

While this bill does not increase the total amount a victim can be reimbursed by CalVCP ($35,000, or $70,000 if federal funding is available), it does provide for payment by the board for a new type of expense. Does it make sense to increase services while revenue is depleting and there are concerns about insolvency when there are many government resources that will help a crime victim enforce his or her rights under Marsy’s Law?

5) **Arguments in Support:**

a) According to the “Crime Survivors Resource Center,” “AB 445 … will close the loophole for victims in our state to receive funds for legal services in the process of their perpetrators trial. By closing the loophole where victims are given the right to legal services but not given the funds to cover the legal services, as opposed to the right to counseling and funding to cover the use of that counseling. When victims are given this funding, often in situations where funding like this is completely unavailable due to the nature of the crimes committed against them, these victims are given a chance to stand up against the criminal and find real justice in the process.…

“The passage of AB 445 will provide the necessary support to victims to use their right to legal services and help offset the burdens placed on them through the legal process.”

b) According to the California Police Chiefs Association, “Under existing law, the California Victim Compensation Board has the discretion to authorize compensation for

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1 The figures are represented are in thousands. So, for example, the projected fund balance for FY 2019-2020 is $17,288,000.
victims of certain crimes. The compensation can be put toward medical or medical-related expenses and installing or increasing residential security; however, attorney fees are not included in expenses deemed reimbursable. According to Business Insider, the average hourly pay for lawyers is $65.51 – litigation is a lengthy process and can take months and even years before a case is settled. This bill will help alleviate the financial burden placed on victims and instead allow him or her to focus on their recovery.”

6) Arguments in Opposition:

a) According to the American Civil Liberties Union of California, “The payments proposed to be authorized under AB 445 are unlike any of the other types of restitution the Victim Compensation Board is authorized to grant. Existing law allows compensation for pecuniary loss for expenses including medical payments, counseling expenses, loss of income or support resulting from injury or death, or a limited amount in relocation costs when necessary to the safety or emotional well-being of the victim.

“As to each of these types of expenses, the harm to be addressed flows directly from the crime. Payment to a privately hired attorney representing a victim is not required as the result of a harm done by the crime, but represents a choice made by the victim as to how to engage with the system. While Marsy’s law allows a victim to retain an attorney to enforce the victim’s rights, those rights can also be enforced by the prosecuting attorney at the request of the victim, or by the victim on his or her own behalf. (California Constitution, Article I, §28, subdivision (c)). The state need not further strain the already overtaxed victim compensation system by subsidizing the choice of some victims to hire private counsel.

“Our criminal justice system relies on the prosecution to represent the interests of the people, including but not limited to the interests of the victims of crime. While a crime victim has the right under Marsy’s Law to hire a private attorney, the state need not encourage that course of action by paying all or part of the private attorney’s fees. To do so risks upsetting the careful balancing of the rights of the people, the defendant, and the victim in our current system.”

b) According to the California Public Defenders Association, “AB 445 proposes that the Victim Restitution Fund be required to pay private lawyers to ‘preserve victim rights.’ Not only does AB 445 fail to describe what form this ‘preservation’ is expected to take, it is also unnecessary, because victims’ rights are already enshrined in the California Constitution, and are already protected by county prosecutors – who do their job without the profit motive incentivized by this bill.

“Under current law, the prosecution ensures that the victim receives the rights to which he or she is entitled under Article 1, section 28 of the California Constitution. Moreover, under current law, a victim is already entitled to recover attorney fees as a part of criminal restitution, provided that those fees are both reasonable and were spent recovering for an actual loss suffered by the victim. This careful balance allows victims to obtain legal assistance where necessary to recover from an actual loss, while simultaneously preventing unscrupulous attorneys from lengthening criminal proceedings in order to seek recoupment from the government or from a criminal defendant for unnecessary court appearances.
“AB 445 proposes to upset that balance by guaranteeing payment to attorneys who ‘preserve’ the rights of a victim – without defining what form ‘preservation’ will take, and regardless of whether the use of the private attorney was necessary to preserve the victim’s rights in the first place. It further proposes to take money from the Victim Restitution fund – money that is currently used to pay victims who have suffered actual loss, including serious medical or economic damage, to fund these private attorneys.”

7) Related Legislation:

a) AB 415 (Maienschein) allows the board to compensate for temporarily housing a pet. AB 415 is pending in the Assembly Appropriations Committee.

b) AB 629 (Smith) authorizes the board to provide compensation equal to loss of income or support to human trafficking victims. AB 629 is pending hearing in this Committee.

c) SB 375 (Durazo) eliminates the deadlines for filing an application for compensation with the board. SB 375 is pending in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
Crime Survivors Resource Center
Crime Victims United of California

Oppose

American Civil Liberties Union of California
California Public Defenders Association (CPDA)

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Eliminates the mandatory confinement period of 180 days in the county jail as a required condition for persons sentenced to probation for specified controlled substance offenses. Specifically, this bill:

1) Eliminates the 180 day mandatory confinement period for a sentence of probation on convictions relating to the sale of cocaine, cocaine hydrochloride, or heroin.

2) Eliminates the 180 day mandatory confinement period for a sentence of probation on convictions for transport, importing into this state, selling, furnishing, administering, or giving away, or offering to transport, import into this state, sell, furnish, administer, or give away, or attempting to import into this state or transport, phencyclidine (PCP).

EXISTING LAW:

1) Requires any person convicted of a specified controlled substance offense relating to the sale of cocaine, cocaine hydrochloride, or heroin, or to the sale or transportation of phencyclidine (PCP), who is eligible for probation and who is granted probation to be confined in the county jail for at least 180 days. (Pen. Code § 1203.076.)

2) Makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport any controlled substance, as specified, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, punishable by imprisonment for three, four, or five years. (Health and Saf. Code § 11352.)

3) Makes it a felony to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport phencyclidine or any of its analogs or its unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, punishable by imprisonment for a period of three, six, or nine years. (Health and Saf. Code § 11379.5.)

4) Prohibits the granting of probation to any person who is convicted of violating the following drug crimes:

   a) Possession for sale of 14.25 grams or more of a substance containing heroin;
   
   b) Sale of, or offering to sell, 14.25 grams or more of a substance containing of heroin;
c) Possession for sale, sale, or offering to sell heroin, with one or more prior convictions for those offenses;

d) Possession for sale of 14.25 grams or more of any salt or solution of phencyclidine (PCP), or any of its analogs or precursors;

e) Transporting for sale, importing for sale, administering, or offering to transport for sale, import for sale, or administer, or attempt to import for sale or transport for sale, PCP or any of its analogs or precursors;

f) Sale of, or offering to sell, PCP or any of its analogs or precursors;

g) Manufacture of PCP or any of its analogs or precursors, as specified;

h) Using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture or sell any specified controlled substance;

i) Using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor be in possession of PCP for sale, sells, distributes, or transports PCP, or manufactures PCP or any of its analogs or precursors;

j) Possession of specified substances, with intent to manufacture PCP or any of its analogs; and,

k) Possession for sale, sale, or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for those offenses. (Pen. Code, § 1203.07, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “Mandatory minimum sentences are an overly punitive and ineffective approach to reducing drug-related crimes and recidivism rates. AB 484 does not eliminate the option for judges to order 180 days in jail. Instead, it allows the courts to better operate in the interest of justice by creating more flexibility to tailor sentences according to the facts of an individual’s case.”

2) **Mandatory Sentencing in California:** In 1994, California passed the “Three Strikes” law. At the time it was enacted, “Three Strikes” established a mandatory sentence of 25 years to life in prison for any defendant convicted of a third felony. The 25 to life sentence was mandatory, leaving no discretion to judges, and requiring them to impose it regardless of whether the third felony was a violent crime or something more benign, such as theft of property.

Many third-strike offenders were serving lengthy prison terms for drug-related felonies. In 2005, ten years after the implementation of Three Strikes, the Legislative Analyst Office (LAO) released a report which found that more than half of the prison population incarcerated under the Three Strikes law were serving sentences for drug and property
crimes. (Three Strikes, the Impact After More than a Decade, LAO, October 2005, at page 16-17, available at: https://lao.ca.gov/2005/3_Strikes/3_strikes_102005.pdf, [as of March 11, 2019].) The Report also suggested that Three Strikes may have had less of an impact on public safety than originally projected. (Id. at 34.).

As originally enacted, Three Strikes produced some appalling results. Shane Taylor, for example, was given a third strike and a sentence of 25 years to life for possessing less than $10 worth of drugs. (Chinn, Three Strikes of Injustice, California Innocence Project, October 11, 2012, available at: https://californiainnocenceproject.org/2012/10/three-strikes-of-injustice/, [as of March 14, 2019].) Leandro Andrade was a nine-year army veteran and father of three young children. He was convicted of two theft offenses for stealing children’s videotapes from two different department stores. (Chemerinsky, Cruel and Unusual: the Story of Leandro Andrade, 52 Drake L. Rev. 1, 1995, at page 1-2, available at: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2404&context=faculty_scholarship, [as of March 12, 2019].) The total cost of the videotapes that Andrade stole was about $150. (Id.) Nonetheless, Andrade was charged with two felonies because he had committed several nonviolent property felony offenses 12 years prior to the theft of the videotapes. (Id. at 2.) As a result of the Three Strikes law, Andrade was sentenced to two consecutive terms of 25 years to life in prison, making him ineligible for parole for 50 years. (Id. at 3.) The father of three was 37 at the time of his offense and would not even be eligible for parole until he turned 87. (Id.) The United States Supreme Court affirmed the sentence. (Lockyer v. Andrade (2003) 538 U.S. 63.)

3) Criminal Justice Reform in California: Due in part to cases like Taylor’s and Andrade’s, Three Strikes and other mandatory sentencing schemes, and long prison sentences in general, began to fall out of favor. Beginning in 2011, with AB 109 ("Realignment"), California began a series of reforms aimed at reducing the state’s reliance on imprisonment as punishment for criminal offenses. Realignment, among other things, restructured the State’s sentencing procedure such that many felony offenses resulted in jail time rather than prison sentences. In 2012, Californians voted to enact Proposition 36, which revised the Three Strikes law so that mandatory life sentences would only be imposed for "violent" or "serious" felonies. In 2014, voters approved Proposition 47, which reclassified numerous drug and property crimes that had previously been felonies, as misdemeanors. Data from the Public Policy Institute of California (PPIC) indicates that crimes rates have continued to go down after these legislative reforms. (Crime Trends in California, PPIC, available at: https://www.ppic.org/publication/crime-trends-in-california/ [as of March 14, 2019].)
4) **This Bill Restores Judicial Discretion and Eliminates a Mandatory Sentence:** Penal Code section 1203.076 requires a judge to impose six months in the county jail for anyone who is sentenced to probation on specified controlled substance offenses. Section 1203.76 was enacted in 1988, and specifically applies anyone who is convicted of a sales offense relating to cocaine, or heroin, or anyone who is convicted of transporting, importing into this state, selling, furnishing, administering, or giving away, or offering or attempting to do any of those things, in a PCP case.

Under existing law, a person convicted of one of the offenses listed above would typically serve either three, four or five years in county jail for a cocaine or heroin offense, or three, six, or nine years in county jail for a PCP offense. However, under California’s determinate sentence law a judge can, in limited circumstances, consider granting probation for these convictions instead of imposing a multiple-year jail term. When a judge does so, Penal Code Section 1203.076 requires the judge to simultaneously impose six months in jail. This bill would remove the requirement that the judge impose six months in jail, and instead permit the judge to do so in his or her discretion.

It should be noted that in many cases, defendants convicted of these offenses will not be eligible for probation pursuant to Penal Code Section 1203.07. Therefore, probation is only likely to be granted in less-serious cases that involve compelling mitigating circumstances.
Furthermore, some of the offenses to which this mandatory confinement period currently apply do not require that a person actually engage in the sale, distribution, transportation, etc. of a controlled substance, and instead criminalize the mere offer or attempt to do so.

5) **Argument in Support:** According to the *California Public Defender’s Association*: “CPDA members can attest based on our close relationships with those entangled in the criminal justice system that mandatory minimums do not work to deter or rehabilitate. Mandatory minimums such as the one found in Section 1203.076 of the Penal Code tie the hands of prosecutors and defense attorney’s alike and increase the population in already congested jails and prisons. The passage of AB 484 would be a significant step toward reducing the jail and prison populations for non-violent drug related offenses.”

6) **Related Legislation:** AB 607 (Carillo) would authorize the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation is prohibited. AB 607 is set for hearing on March 19th in the Assembly Public Safety Committee.

7) **Prior Legislation:**

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

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

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

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
San Francisco Public Defender’s Office

**Opposition**

None
SUMMARY: Allows a person that holds a valid license to carry a concealed firearm to carry that firearm to, from, or in a church, synagogue, or other building used as a place of worship on the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, with the written permission of specified school authorities. Specifically, this bill:

1) Authorizes a person that holds a valid license to carry a concealed firearm to carry that firearm to, from, or in a church, synagogue, or other building used as a place of worship on the grounds of a public school providing instruction in kindergarten or grades 1 to 12, inclusive, with the written permission of the school district superintendent, the superintendent’s designee, or equivalent school authority, if the following conditions are met:

   a) The request for written permission may be denied;
   
   b) The written permission shall be valid for no longer than one year;
   
   c) The permission may be revoked at any time; and,
   
   d) A person is only authorized to carry the firearm on school grounds during the time of worship.

2) Authorizes a person that holds a valid license to carry a concealed firearm to carry that firearm to, from, or in a church, synagogue, or other building used as a place of worship on the grounds of a private school providing instruction in kindergarten or grades 1 to 12, inclusive, with the written permission of the school authority, if the following conditions are met:

   a) The request for written permission may be denied;
   
   b) The written permission valid shall be valid for no longer than the school authorities specify;
   
   c) The permission may be revoked at any time; and,
   
   d) A person is only authorized to carry the firearm on school grounds during the time specified by the school authority.
EXISTING LAW:

1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)

2) Defines a “school zone” to mean an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)

3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)

   a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years;

   b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:

      i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,

      ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:

         (1) If the person previously has been convicted of any felony, or of any specified crime.

         (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.

         (3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.

   c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years;

   d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months;

   e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months;

   f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or
imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months;

g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years; and,

h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.

4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)

   a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful;

   b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle;

   c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

   d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified; and,

   e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.

5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (I).)

   a) A duly appointed peace officer;

   b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;

   c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;

e) A person holding a valid license to carry a concealed firearm;

f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;

g) A security guard authorized to carry a loaded firearm;

h) An honorably retired peace officer authorized to carry a concealed or loaded firearm;

i) An existing shooting range at a public or private school or university or college campus;

j) The activities of a program involving shooting sports or activities, including, but not limited to, trap shooting, skeet shooting, sporting clays, and pistol shooting, that are sanctioned by a school, school district, college, university, or other governing body of the institution that occurs on the grounds of a public or private school or university or college campus; or

k) The activities of a state-certified hunter education program, as specified, if all firearms are unloaded and participants do not possess live ammunition in a school building.

6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons: (Pen. Code, § 626.9, subd. (l).)

a) A duly appointed peace officer as defined;

b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;

c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer;

d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties;

e) A person holding a valid license to carry the firearm; and,

f) An armored vehicle guard, who is engaged in the performance of that person's duties.

**FISCAL EFFECT:** Unknown
COMMENTS:

1) **Author's Statement:** According to the author, "AB 503 would allow pre-approved individuals to carry their CCWs while attending religious services on school property. This bill recognizes the safety of all by ensuring that religious institutions have the ability to protect their congregation in the way they see fit while maintaining school authority."

2) **Argument in Support:** None submitted

3) **Argument in Opposition:** According to the *American Academy of Pediatrics*, "Loosening restrictions on concealed carry firearms in California's school zones is contrary to the need for the legislature to increase protections for children, youth and the community from gun violence. Commenting in 2017 on proposed federal legislation that would have made it easier to carry locked, loaded, and hidden firearms in public, AAP Past President Fernando Stein, MD states, ‘Research shows that easier access to firearms increases the risk that children and youth will be injured or killed by guns; making the concealed carry of firearms easier is a threat to children's safety.'

"Further, the American Academy of Pediatrics urges legislators to "...reject any legislation that weakens gun violence prevention laws and puts children's safety at risk... All children deserve to be safe from gun violence where they live, learn, and play. Pediatricians will not stand for anything less than progress when it comes to protecting children, families and communities from gun violence."

4) **Prior Legislation:** AB 2318 (Flora) of the 2017-18 Legislative Session was identical to this bill. AB 2318 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support
None

Opposition

American Academy of Pediatrics, California
Brady California United Against Gun Violence

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Establishes the Orange County Task Force in order to identify, arrest, and prosecute the criminals who participate in property crime, and to increase prevention methods and diversion. Specifically, this bill:

1) States that the task force shall be chaired by the Orange County Sheriff.

2) Provides that the task force will be comprised of one representative from the following organizations:
   a) Orange County District Attorney;
   b) Orange County Public Defender;
   c) Orange County Peace Officers Association; and,
   d) Association of Orange County Deputy Sheriffs.

3) Mandates that the chair shall appoint one representative from:
   a) A crime victims’ association; and
   b) A nonprofit, community-based property crime prevention organization.

4) States that the members of the task force shall serve at the pleasure of their appointing authority.

5) Requires the task force to do all of the following:
   a) Work together to assess problems with property crime in Orange County;
   b) Jointly develop prevention and diversion methods;
   c) Jointly share information and resources that lead to the prosecution of individuals participating in property crimes;
   d) Coordinate interagency action to implement those prevention methods.
6) Provides that, on or before January 1, 2020, the task force shall submit a report to the Legislature with recommendations for local efforts that identify five of the following issues:

a) Stakeholders interested in preventing and intervening in property crime;

b) Data to utilize in analyzing property crimes;

c) Effective messages and channels for communicating those messages to the public;

d) Specific strategies for all members to follow in response to criminals who continue to participate in property crime; and,

e) Specific community referrals for youth participating in property crime activities such as recreation, job training, and other constructive programs, as specified.

7) States that the task force shall only be implemented upon appropriation from the General Fund.

EXISTING LAW:

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

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

3) States that notwithstanding any provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 shall be considered petty theft and shall be punished as a misdemeanor, except in the case where a person has prior serious, violent, or sex convictions. (Pen. Code, § 490.2, subd. (a).) This provision does not apply to theft of a firearm. (Pen. Code, § 490.2, subd. (c).)

4) Specifies that petty theft shall be punished as a misdemeanor, except in the case where a person has a specified prior serious, violent, or sex conviction. (Pen. Code, § 490.2, subd. (a).)

5) Provides that any person convicted of petty theft, who has a specified prior theft conviction, as well as a specified prior serious, violent, or sex conviction, may be punished by imprisonment in the county jail not exceeding one year, or in state prison. (Pen. Code, § 666.)

6) Provides that except in cases where a different punishment is specified, a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding $1,000, or by both. (Pen. Code, § 666.)

7) Provides that the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare may develop within their respective jurisdictions a Central Valley Rural Crime Prevention Program, which shall be administered by the county district attorney’s office of each respective county under a joint powers agreement with the corresponding county
sheriff's office. (Pen. Code, §14171, subd.(a).)

8) Provides that the parties to each agreement shall form a regional task force known as the "Central Valley Rural Crime Task Force" which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations. (Pen. Code, § 14171(b).)

9) Allows the Central Valley Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects. (Pen. Code, § 14171, subd. (b)(2).)

10) Provides that the Central Coast Rural Crime Prevention program (CRCPP) shall be administered in San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo Counties by the county district attorney's office under a joint powers agreement with the county sheriff's office, and in Monterey County by the county sheriff's office under a joint powers agreement with the county district attorney's office. (Pen. Code, § 14181, subd. (a).)

11) Provides that the parties to each agreement shall form a regional task force known as the "Central Coast Rural Crime Task Force" which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations. (Pen. Code, § 14181, subd. (b).)

12) Authorizes the Central Coast Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects. (Pen. Code, § 14181, subd. (b)(1).)

13) Authorizes the Central Coast Rural Crime Task Force to develop a uniform procedure for all participating counties to collect data on agricultural crimes, establish a central database for the collection and maintenance of data on agricultural crimes, and designate one participating county to maintain the database. (Pen. Code, § 14181, subd. (b)(2).)

14) States that the staff for each program developed by the Central Coast Rural Crime Task Force shall consist of the personnel designated by the district attorney and the sheriff of each county in accordance with the joint powers agreement. (Pen. Code, § 14181, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 517 will create a Task Force that will consist of community representatives and public safety. This Task Force will work towards crime prevention measures by working with leaders throughout the area to take preventative measures. They will share information about crimes that occur, work with the public to create precaution measurements, and intervene to create long term crime deterrence. Cooperation between agencies is important in maintaining a safe environment for everyone."

2) Property Crime in Orange County: After compiling law enforcement records, the Orange County Register (ORC) stated that in 2015 crime had risen 23 percent in Orange County, with increases mainly in property crimes. However, from a broader perspective, Orange
County’s crime levels were still lower than they were in 2006. (Orange County Register. (2016). Crime’s Up in Orange County; What’s to Blame? <https://www.ocregister.com/2016/04/08/crimes-up-in-orange-county-whats-to-blame/> [Apr. 5, 2018].)

In a follow up article written one year later, ORC found that property crime rates held near the levels from the previous year, burglaries had increased, and overall crime had dipped by four percent. Individual cities within the county had varied experiences, with property crimes increasing in some and falling in others. (Orange County Register. (2017). Crime is Down 4% in Orange County, but Burglaries are on the Rise. <https://www.ocregister.com/2017/03/21/crime-is-down-4-in-orange-county-but-burglaries-are-on-the-rise/> [Apr. 5, 2018].)

3) Southern California Crime Report: In its report from 2018, the University of California, Irvine, uses data from the FBI’s Uniform Crime Reporting program to describe the level of crime in cities located in Southern California. For yearly analyses, the report uses standardized crime rates, which compares crime rates for cities within Southern California region to the average level of crime for U.S. cities with a population above 25,000. For statistics spanning three year periods, it averages the yearly crime rate over three years. In one part, it adjusts crime rates based on socio-demographic characteristics that criminologists link to levels of crime in cities; such as unemployment rate, percentage of immigrants, level of income inequality, population density, racial/ethnic composition, percent aged 16 to 29 (the most crime prone population), and other characteristics. ((University of California, Irvine. (2018). Southern California Crime Report. <http://ilssc.soceco.uci.edu/files/2018/02/ILSSC_SoCal_Crime_Report_2018.pdf> [Apr. 5, 2018].)

No city from Orange County appeared in its “Top 10 cities with highest property crime rate” list that spanned 2014-2016. Orange County cities did appear five out of ten times in its top ten lowest standardized property crime rate list for 2014-2016. However, once it adjusted for characteristics such as those listed in the paragraph above, two Orange County cities appeared in its top ten highest property crime rate list for 2014-2016. (Id.)

Also, in its top ten cities with largest increase in property crime rate in the last ten years list, one Orange County city appeared, while San Bernardino and Riverside appeared twice, and Los Angeles appeared three times. However, three Orange County cities did appear in the report’s top ten cities with large decrease in property crime rate in the last 10 years list. (Id.)

In terms of future outlook, the report states that the “model forecasts that Orange County will experience a decrease in crime.” (Id.)

4) Orange County Comparative Property Crime Rate in 2016: The California Department of Justice’s OpenJustice website compiles on an Excel spreadsheet the crimes and clearances data provided by California law enforcement agencies in accordance with the Federal Uniform Crime Reporting Program. The data, spanning from 1985 to 2016, encompasses violent crimes such as homicide and rape, as well as property crimes such as burglary and motor vehicle-theft. The website also provides a computational formula to determine crime rates within a population and variable information explaining the codes used in the dataset. (Department of Justice. Crime Statistics. <https://openjustice.doj.ca.gov/crime-statistics/>
In accordance with the computational formula and, gathering population estimates from the U.S. Census\(^1\), this committee calculated that Orange County had an overall property crime rate of 2,194 per 100,000 persons in 2016.

Although higher than some counties like San Diego, which had a property crime rate of 1,849 per 100,000 persons, Orange County’s property crime rate did not appear relatively high. Alameda County had a property crime rate of 3,626 per 100,000, neighboring Riverside County had a property crime rate of 2,736 per 100,000 and Los Angeles County had a property crime rate of 2,488 per 100,000.

5) **Prior Legislation:** AB 2536 (Chen), of the 2017-18 Legislative Session, was identical to this bill, and would have established the Orange County Property Crimes Task Force subject to an appropriation from the General Fund. AB 2536 was held on the Assembly Appropriations Committee suspense file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Crime Victims United

**Opposition**

None

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

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\(^1\) United States Census Bureau. *QuickFacts.* [https://www.census.gov/quickfacts/fact/table/US/PST120217] [Apr. 4, 2018].)
Date of Hearing: March 19, 2019  
Chief Counsel: Gregory Pagan  

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

AB 524 (Bigelow) – As Amended February 28, 2019  

SUMMARY: Adds Mono and San Mateo Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to specified custodial assignments are peace officers whose authority extends to any place in California while engaged in the performance of the duties of his or her respective employment.  

EXISTING LAW:  

1) Provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, § 830.1 subd. (c).)  

2) Provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers under this section do not have the right to carry or possess firearms in the performance of his or her duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831.)  

3) Provides that notwithstanding existing law, law enforcement agencies in counties with a population of 425,000 or less and the Counties of San Diego, Fresno, Kern, Napa, Riverside, Santa Clara, and Stanislaus may employ custodial officers with enhanced powers. The enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody. (Pen. Code, § 831.5, subd. (a).)  

4) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the Commission on Peace Officers Standards and Training (POST) course. (Pen. Code, § 832 subd. (b).)
5) Provides that the enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties such as while assigned as a court bailiff, transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, escapes, or rescues. (Pen. Code, § 831.5 subd. (b).)

6) Provides that enhanced powers custodial officers may also make warrantless arrests within the facility. (Pen. Code, § 831.5 subd. (f).)

7) Requires a peace officer to be present in a supervisory capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5 subd. (d).)

8) Provides that custodial officers employed by the Santa Clara County, Napa County, and Madera DOC’s are authorized to perform the following additional duties in the facility:

   a) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

   b) Search property, cells, prisoners, or visitors;

   c) Conduct strip or body cavity searches of prisoners as specified;

   d) Conduct searches and seizures pursuant to a duly issued warrant;

   e) Segregate prisoners; and,

   f) Classify prisoners for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5 subds. (g), (h) & (i).)

9) States that it is the intent of the Legislature, as it relates to Santa Clara, Madera, and Napa Counties, to enumerate specific duties of custodial officers and to clarify the relationship of correctional officers and deputy sheriffs in Santa Clara County. And, that it is the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process. The language is, additionally, clear that it should not be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs or to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs. (Pen. Code, § 831.5 subd. (j).)

10) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by POST and that, after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code, § 832 subd. (a).)

11) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832 subd. (b).)
12) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832 subd.(c).)

13) Provides that any person completing the POST training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of powers as a peace officer. This requirement does not apply to any person who meets any of the following requirements (Pen. Code, § 832 subd. (e)(1)).:

a) Is returning to a management position that is at the second level of supervision or higher (Pen. Code, § 832 subd. (e)(2)(A).);

b) Has successfully requalified for a basic course through POST (Pen. Code, § 832 subd. (e)(2)(B).);

c) Has maintained proficiency through teaching the POST course (Pen. Code, § 832 subd (e)(2)(C).);

d) During the break in California service, was continuously employed as a peace officer in another state or at the federal level (Pen. Code, § 832 subd. (e)(2)(D).); and,

e) Has previously met the testing requirement, has been appointed a peace officer under Penal Code Section 830.1(c), and has continuously been employed as a custodial officer as defined in Penal Code Section 831 or 831.5 since completing the POST course. (Pen. Code, § 832 subd. (e)(2)(E).).

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Allowing a limited number of correctional officers to obtain peace officer status in the counties of Mono and San Mateo would increase the effectiveness of correctional officers. The number of deputy sheriffs' ranks has been decreasing, and AB 524 would increase the number of qualified individuals to perform deputy sheriff tasks."

2) Benefits Granted to Those Designated as Custodial Deputy Sheriffs: Penal Code § 830.1 subd. (c) custodial deputy sheriffs classification is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code §§ 831 and 831.5 are not peace officers, whereas a Penal Code § 830.1 subd. (c) custodial deputy sheriff is a peace officer, "who is employed to perform duties exclusively or initially relating to custodial assignments." (Penal Code § 830.1 subd. (c).) One of the most significant differences between the Penal Code § 830.1 subd. (c) custodial deputy sheriffs and Penal Code §§ 831 and 831.5 custodial officers is that as "peace officers" the Penal Code Section 830.1(c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights Act. (Government Code § 3301 et seq.)
Madera and Yuba – and all counties – may utilize Penal Code § 831 non-peace officer custodial officers; however, these officers may not carry firearms. (Penal Code § 831 subd. (b).) However, there are limitations on the authority and use of Penal Code Section 831.5 custodial officers. For example, Penal Code § 831.5 custodial officers may not perform strip searches (unless they are employed in Santa Clara County, Napa County, or Madera County), have limited arrest powers, and are limited in their “armed duty” roles. Another limitation on the use of both Penal Code § 831 and 831.5 non-peace officer custodial officers is that whenever 20 or more of such officers are on duty there must be at least one Penal Code § 830.1 peace officer, who has received the full 664-plus hour basic training for Penal Code § 830.1(a) deputy sheriffs, on duty at the same time to supervise the custodial officers. (Penal Code §§ 831 subd. (d) and 831.5 subd. (d).)

3) Prior Legislation:

a) AB 574 (Villaraigosa), Chapter 950, Statutes of 1996, added Penal Code Section 830.1(c), which allowed the Los Angeles County Sheriff to hire a "second tier" of sheriff's deputies who "are employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates."

b) SB 1762 (Alpert), Chapter 61, Statutes of 2000, and SB 926 (Battin), Chapter 68, Statutes of 2001, amended Penal Code Section 830.1(c) to provide peace officer status while on duty only to Riverside County and San Diego County deputy sheriffs employed to provide custodial care and supervision of inmates in the county jail and related facilities.

c) AB 2346 (Dickerson), Chapter 185, Statutes of 2002, extended the same provisions of SB 1762 to deputy sheriffs in Kern, Humboldt, Imperial, Mendocino, Plumas, Santa Barbara, Siskiyou, Sonoma, Sutter, and Tehama Counties.

d) AB 1254 (La Malfa), Chapter 70, Statutes of 2003, and SB 570 (Chesbro), Chapter 710, Statutes of 2003, extended the same provisions of SB 1762 to deputy sheriffs in Shasta and Solano Counties.

e) AB 1931 (La Malfa), Chapter 516, Statutes of 2004, extended the same provisions of SB 1762 to deputy sheriffs in Butte County.

f) AB 272 (Matthews), Chapter 127, Statutes of 2005, extended the same provisions of SB 1762 to deputy sheriffs in Inyo, Merced, San Joaquin, and Tulare Counties.

g) AB 151 (Berryhill), Chapter 84, Statutes of 2007, extended the same provisions of SB 1762 to deputy sheriffs in Glenn, Lassen, and Stanislaus Counties.

h) AB 2215 (Berryhill), Chapter 15, Statutes of 2008, extended the same provisions of SB 1762 to deputy sheriffs in Lake, Calaveras, Mariposa, and San Benito Counties.

i) AB 1695 (Beall), Chapter 575, Statutes of 2010, allowed the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to duties performed at Santa Clara
Valley Medical Center.

j) SB 1254 (La Malfa), Chapter 66, Statutes of 2012, provided peace officer status to deputy sheriffs in Trinity and Yuba Counties employed to provide custodial care and supervision of inmates in the county jail and related facilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Mono County Sheriff's Office (Sponsor)
San Mateo County Sheriff's Office (Sponsor)
San Mateo County Board of Supervisors
San Mateo County Deputy Sheriff's Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Allows a defendant who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service to petition for recall of a sentence and resentencing without regard to when the defendant was sentenced and would clarify that this relief is available whether or not there was argument or evidence about the defendant’s condition at the time trial.

EXISTING LAW:

1) Requires the court, prior to sentencing, to make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her service. (Pen. Code § 1170.9, subd. (a).)

2) Requires the court to consider the fact that the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her service as a factor in favor of granting probation. (Pen. Code § 1170.9, subd. (b)(1).)

3) Allows the court to order such a defendant into a local, state, federal, or private nonprofit treatment program for a period not to exceed that period which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists. (Pen. Code § 1170.9, subd. (b)(2).)

4) Provides that if the court concludes that a defendant convicted of a felony offense, is, or was, a member of the military who may be suffering from sexual trauma, traumatic brain injury, PTSD, substance abuse, or psychological problems as a result of that service, the court must consider the circumstance as a factor in mitigation when imposing one of three possible terms the determinate sentencing law, as specified. This does not preclude the court from considering similar trauma, injury, substance abuse, or psychological problems due to other cases in mitigation. (Pen. Code, § 1170.91.)

5) Provides that the purpose of imprisonment for crime is punishment; that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances; and that the elimination of disparity, and the provision of uniformity, of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the
offense, as determined by the Legislature, to be imposed by the court with specified
discretion. (Pen. Code, § 1170, subd. (a)(1).)

6) Provides that, under the determinate sentencing law, when a judgment of imprisonment is to
be imposed and the statute specifies three possible terms, the choice of the appropriate term
rests within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)

7) Provides that, in exercising discretion to select one of the three authorized prison terms as
specified, "the sentencing judge may consider circumstances in aggravation or mitigation,
and any other factor reasonably related to the sentencing decision. The relevant
circumstances may be obtained from the case record, the probation officer's report, other
reports and statements properly received, statements in aggravation or mitigation, and any
evidence introduced at the sentencing hearing." (Cal. Rules of Court, Rule 4.420(b).)

8) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as
specified. (Cal. Rules of Court, Rule 4.421.)

9) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as
specified. (Cal. Rules of Court, Rule 4.423.)

10) Allows the court, within 120 days of the sentence, on its own motion, or at any time upon the
recommendation of the secretary or the Board of Parole Hearings in the case of state prison
inmates, or the county correctional administrator in the case of county jail inmates, or the
district attorney of the county in which the defendant was sentenced, to recall the sentence
previously ordered and resentence the defendant in the same manner as if he or she had not
previously been sentenced, provided the new sentence, if any, is no greater than the initial
sentence. (Pen. Code, § 1170, subd. (d)(1).)

11) Allows a defendant who was, or is, a member of the United States military who is charged
with a misdemeanor, and who may be suffering from sexual trauma, traumatic brain injury,
post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or
her military service, to participate in a pretrial diversion program. (Pen. Code § 1001.80.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "One of the unfortunate consequences of
Post-Traumatic Stress Disorder (PTSD) is an increased propensity for criminal behavior.
This is tragically due to the fact that among incarcerated veterans, veterans from the most
recent conflict are three times more likely to have combat-related PTSD. There is a clear
connection between PTSD and other combat related mental health problems and
incarceration. As a state, we must do more to recognize the role these mental health problems
can play in criminal activity. AB 581 helps incarcerated veterans if new evidence pertaining
to a service related mental illnesses was obtained post incarceration or the illness was not
diagnosed or evident at the time of sentencing."

2) **Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) in Veterans:**
According to the National Institute of Health, PTSD is a disorder that develops in some
people who have experienced a shocking, scary, or dangerous event. Fear triggers many split-second changes in the body to help defend against danger or to avoid it. This “fight-or-flight” response is a typical reaction meant to protect a person from harm. Nearly everyone will experience a range of reactions after trauma, yet most people recover from initial symptoms naturally. Those who continue to experience problems may be diagnosed with PTSD. People who have PTSD may feel stressed or frightened even when they are not in danger. (https://www.nimh.nih.gov/health/topics/post-traumatic-stress-disorder-ptsd/index.shtml, [as of March 12, 2019].)

According to the National Center for Health Research, members of the United States Armed Forces (USAF) are one of the largest groups of people who are diagnosed with PTSD. (See http://www.center4research.org/traumatic-brain-injury-post-traumatic-stress-disorder-military-veterans-two-problems-collide/, [as of March 12, 2019].) According to that group, an estimated 142,000 veterans of the recent wars in Iraq and Afghanistan suffer from PTSD, and that number may increase by as much as double with the passage of time. (Id.)

Members of the USAF are also at risk for TBI. (Id.) TBI is caused by a hit, bump, or other injury to the head. A TBI may range from a mild injury, where the person has a short change in mental state or consciousness, to a severe injury, where the person has an extended period of unconsciousness or memory loss. TBI is common in military veterans, with almost 288,000 U.S. veterans having suffered one from 2000-2015.

3) **Incarcerated Veterans:** The number of veterans incarcerated in state and federal prisons and local jail in 2011-2012 was 181,500. (Bronson, Carson & Noonan, Veterans in Prison and Jail, 2011-12 (Dec. 2015) U.S. Dep’t of Justice, Bureau of Justice Statistics, p. 1.) “About half of all veterans in prison (48%) and jail (55%) had been told by a mental health professional they had a mental disorder.” (Id.) “Incarcerated defendants who saw combat (60% in prison and 67% in jail) were more likely than noncombat veterans (44% in prison and 49% in jail) to have been told they have a mental disorder.” (Id.)

Data on the number of incarcerated veterans in California has historically been difficult to obtain. One of the reasons was because this information was self-reported. However, the California Department of Corrections and Rehabilitation (CDCR) has previously informed this Committee that as of February 2014, CDCR was able to verify prior military service via a data exchange with the U.S. Department of Veterans Affairs (USDVA). According to CDCR, as of 2018, there were 4,715 incarcerated inmates at CDCR verified by the USDVA as having prior military service.

4) **Existing Law Covers Both Prospective and Retroactive Consideration of the Mitigating Circumstances Identified in this Bill:** AB 2098 (Levine), Statutes of 2014, added Section 1170.91 to the Penal Code. That section requires the court to consider a defendant’s status as a veteran suffering from PTSD, TBI, and other forms mental illness as a result of military service as a factor in favor of granting probation and as a mitigating factor when choosing between the lower, middle, or upper term. Last year, AB 865 (Levine), Statutes of 2018 authorized a court to resentence any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems including PTSD, TBI, and sexual trauma as a result of his or her military service. In other words, it is already a requirement of law that the court consider the mitigating circumstances identified in this bill for anyone who is
sentenced, and anyone who did not receive the benefit of that requirement because they were sentenced prior to the time when that law went into effect can petition to have their sentence recalled and be resentedenced by the judge.

This bill would allow for veteran suffering from one of the specified mental health issues to be resentedenced if, for some reason the issue was not brought to the attention of the court at the time of sentencing. Rather than having to resort to a traditional form of post-conviction relief, such as *habeas corpus*, it would allow a specified group of persons to simply ask for a recall of sentence. It is unclear how often this has or will happen. Given the fact that existing law covers both prospective and retroactive application of the sentencing factors identified in this bill, it is somewhat unclear why this legislation is necessary.

5) **Argument in Support:** According to the *California Public Defender’s Association*: “In 2014, AB 2098 (Stats. 2014, ch. 163), enacted Penal Code section 1170.91, effective January 1, 2015, to provide that if the court concludes that a defendant convicted of a felony is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of the defendant’s military service, the court shall consider that circumstance as a factor in mitigation when imposing a determinate term.

“Thus, Penal Code section 1170.91 states a mitigating factor that the court must consider whenever that factor applies.

“The, in 2018, [sic] AB 865 (Stats. 2018, ch. 523) amended section 1170.91 to permit the court to resentence a person currently serving a sentence who meets that section’s criteria, and who was sentenced prior to the effective date of that section on January 1, 2015. In other words, the 2018 amendment made Penal Code section 1170.91 operate retroactively.

“Unfortunately, because our Penal Code’s sentencing provisions are so prolix, courts sometimes overlooked this fairly new, and obscure, statute. When that oversight occurred, and is brought to the court’s attention after the person is sentenced and is serving a felony term, AB 518 [sic], lets the court fix that oversight, by recalling the sentence, and resentencing the person giving proper consideration to that statutory mitigating factor.

“Thus, this bill does not really even change existing law, it simply lets the court correct a sentencing oversight – failure to have considered a mitigating factor that it was required to consider -- when that has occurred. This rectification of existing law is clearly in the interest of justice.”

6) **Argument in Opposition:** According to >

7) **Prior Legislation:**

a) AB 865 (Levine), Chapter 523, Statutes of 2018, authorizes the court to resentence any person who was sentenced for a felony conviction prior to January 1, 2015, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service.
b) SB 776 (Newman) Chapter 599, Statutes of 2017, requires the Department of Veterans Affairs to provide one employee for every 5 state prisons, who is trained and accredited by the department, to assist incarcerated veterans in applying for and receiving any federal or other veterans’ benefits for which they or their families may be eligible.

c) SB 1084 (Hancock), Chapter 867, Statutes of 2016, extended to January 1, 2022, the authority of the court to, in its sound discretion, impose the appropriate term that best serves the interests of justice. The bill would, on and after January 1, 2022, require the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.

d) AB 2098 (Levine), Chapter 163, Statutes of 2014, requires the court to consider a defendant’s status as a veteran suffering from post-traumatic stress disorder (PTSD) or other forms of trauma when making specified sentencing determinations.

e) SB 1227 (Hancock), Chapter 658, Statutes of 2014, authorizes pretrial diversion for members of the military for specified offenses.

f) SB 769 (Block), Chapter 46, Statutes of 2013, clarifies that dismissal of a case under provisions for veteran defendants who had military-service-related mental health issues does not restore a defendant's right to possess a firearm, and does not prevent conviction for being a felon or drug addict in possession of a firearm.

g) AB 2371 (Butler), Chapter 403, Statutes of 2012, provides restorative relief to a veteran defendant who acquires a criminal record due to a mental disorder stemming from military service.

h) AB 593 (Ma) Chapter 803, Statutes of 2012, provides that a writ of habeas corpus based on intimate partner battering may be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not introduced at trial, thereby affecting the outcome of the case.

i) AB 674 (Salas), Chapter 347, Statutes of 2010, allows a court to order a defendant who suffers from sexual trauma, traumatic brain injury, PTSD, substance abuse, or mental health problems as a result of military service into a treatment program or veteran's court for a period not to exceed that which the defendant would have served in state prison or jail.

j) AB 2586 (Parra), Chapter 788, Statutes of 2006, allows the court to consider a treatment program, in lieu of incarceration, as a condition of probation in cases involving military veterans who suffer from PTSD, substance abuse, or psychological problems stemming from their military service.

k) SB 799 (Karnette), Chapter 858, Statutes of 2001, allows a writ of habeas corpus to be prosecuted on the grounds that evidence relating to battered woman syndrome was not introduced at the trial, thereby affecting the outcome of the case.
REGISTERED SUPPORT / OPPOSITION:

Support

American Legion, Department of California
California Attorneys for Criminal Justice
California Public Defenders Association
Initiate Justice
Reeb Government Relations, LLC
San Francisco Public Defender's Office

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Increases the penalties for “hit and run” resulting in permanent, serious injury or death to another. Specifically, this bill:

1) Increases the punishment for fleeing the scene of an accident resulting in permanent serious injury to another from a “wobbler” (alternate felony or misdemeanor) having a maximum punishment of four years in state prison, to a felony punishable by four, five, or six years in state prison.

2) Increases the punishment for fleeing the scene of an accident resulting in the death of another from a “wobbler” having a maximum punishment of four years in state prison, to a felony punishable by six, seven, or eight years in state prison.

EXISTING LAW:

1) Requires the driver of a vehicle involved in an accident resulting in injury to another person to stop at the scene of the accident and to fulfill specified requirements, including providing identifying information and rendering assistance. (Veh. Code, § 20001, subd. (a).)

2) Provides that, except as specified, fleeing the scene of an accident resulting in injury to another, is punishable by 16 months, two, or three years in state prison or, by imprisonment in a county jail not to exceed one year, or by a fine of not less than $1,000 nor more than $10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subd. (b)(1).)

3) Provides that fleeing the scene of an accident which results in permanent, serious injury or death to another, is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine ranging between $1,000 and $10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subd. (b).)

4) Allows the court, in the interests of justice, to reduce or eliminate the minimum term of imprisonment required for a conviction of fleeing the scene of an accident causing death or permanent, serious injury. (Veh. Code, § 20001, subd. (b).)

5) States that a person who flees the scene of an accident after committing gross vehicular manslaughter or gross vehicular manslaughter while intoxicated, upon conviction for that offense, shall be punished by an additional term of five years in the state prison. This additional term runs consecutive to the punishment for the vehicular manslaughter. (Veh. Code, § 20001, subd. (c).)
6) Defines “gross vehicular manslaughter” as the unlawful killing of a human being, in the driving of a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or with driving a vehicle in the commission of a lawful act which might produce death, in an unlawful act, and with gross negligence. Gross vehicular manslaughter is punishable by either imprisonment in a county jail for not more than one year, or in the state prison for two, four, or six years. (Pen. Code, § 191, subd. (c)(1).)

7) Defines “gross vehicular manslaughter” while intoxicated as the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driver was under the influence of drugs or alcohol, and the killing was either the proximate result of an unlawful act not amounting to a felony, and with gross negligence, or the proximate result of a lawful act that might produce death, in an unlawful manner, and with gross negligence. Gross vehicle manslaughter while intoxicated is punishable by imprisonment in the state prison for four, six, or ten years. (Pen. Code, § 191.5, subd. (a).)

8) Provides for additional punishment when great bodily injury is inflicted during the commission of a felony not having bodily harm as an element of the offense. (Pen. Code, § 12022.7.)

9) Provides that an act or omission that is punishable in different ways by different provisions of law shall be punished under the law providing for the longest term of punishment, but in no case can the act or omission be punished under more than one law. (Pen. Code, § 654.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “AB 582 is a result of the tragic hit-and-run death of Gavin Gladding, a beloved member of the Clovis community. The driver of the vehicle that killed Gavin was likely drinking at a party before the accident; however, because he fled the scene, law enforcement was unable to determine if he was under the influence at the time of the accident. He received a short sentence of 3 years in prison and will only serve half of that time.

"Most drivers who leave the scene of an accident do so because they are under the influence of alcohol or drugs at the time and fear the consequences. To deter drivers from leaving the scene, AB 582 will increase the possible penalty for hit-and-run resulting in great bodily injury or death. By bringing this code more into line with the penalties assessed for vehicular manslaughter and making them greater than a DUI sentence, AB 582 will encourage drivers to stay at the scene of a crime, even if they may be under the influence, as opposed to fleeing the scene. This will help ensure that justice is served in a timely and appropriate manner."

2) Fleeing the Scene of an Accident Resulting in Injury: Vehicle Code section 20001 is commonly known as “hit and run.” To prove a violation of hit and run resulting in permanent, serious injury or death the prosecution must establish that: (1) the defendant was involved in a vehicle accident while driving; (2) the accident caused permanent, serious injury or death to another; (3) the defendant knew that he or she was involved in an accident that injured another person, or knew from the nature of the accident that it was probable that another person had been injured; and, (4) the defendant willfully failed to perform one or
more duties, including immediately stopping at the scene, providing reasonable assistance to any injured person, to provide specified identifying information, and showing driver’s license upon request. (See CALCRIM No. 2140.)

“The purpose of [the statute] is to prevent the driver of an automobile from leaving the scene of an accident in which he participates or is involved without proper identification and to compel necessary assistance to those who may be injured. The requirements of the statute are operative and binding on all drivers involved in an accident regardless of any question of their negligence respectively.” (People v. Scofield (1928) 203 Cal. 703, 708.) In other words, it is not necessary to drive impaired, recklessly or negligently. These duties apply regardless of the fault of the accident.

Currently, the crime of hit and run resulting in death or permanent, serious injury is a wobbler. The crime is punishable by up to one year in jail, or up to four years in prison. (Veh. Code, § 20001, subd. (b).) This bill would increase the punishment to a maximum of six years in prison where the accident results in permanent, serious injury. Where the accident results in death, the bill would increase the term of punishment to up to eight years in prison.

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

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

CDCR’s February 2019 monthly report on the prison population notes that the in-state adult institution population is currently 113,656 inmates, which amounts to 133.6% of design capacity. Additionally, there are still 1,463 prisoners being housed out of state. (https://www.cddrc.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TOP1A/TOP1Ad1902.pdf)

The Governor’s January proposed budget for 2019-2020 anticipates that “The average daily adult inmate population is now projected to be 128,334, an increase of 1.1 percent over spring projections. However, current projections show the adult inmate population is trending downward and is expected to decrease by approximately 1,360 offenders between 2018-19 and 2019-20. Proposition 57, the Public Safety and Rehabilitation Act of 2016, established a durable solution to end federal court oversight and create more incentives for inmates to participate in rehabilitative programs. Proposition 57 is currently estimated to reduce the average daily adult inmate population by approximately 6,300 in 2019-20, growing to an inmate reduction of approximately 10,500 in 2021-22. The estimated impact of Proposition 57 has been incorporated into the aforementioned total population projections.”
Thus, while CDCR is currently in compliance with the three-judge panel’s order on the prison population, the state needs to maintain a “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).)

CDCR has informed this Committee that in 2018 alone there were 213 new admissions to state prison of persons convicted of a felony violation of hit and run causing injury other than permanent, serious injury. In the same year, there were 95 new admissions for the hit and run causing permanent, serious injury or death.

Based on these numbers, the significant penalty increases proposed by this bill for hit and run resulting in permanent, serious injury or death are inconsistent with the three-judge panel’s requirement that the state maintain a durable solution to prison overcrowding.

4) **Argument in Support**: According to the *Fresno County District Attorney*, “AB 582 is named after Gavin Gladding, a beloved educator here in Fresno County, who was tragically killed in a hit-and-run incident in 2018. Currently, the penalty for an individual who leaves the scene of a vehicle accident resulting in death or a permanent, serious injury is a maximum of four years and/or a fine of $1,000-$10,000.

“The current potential sentence is not enough to deter drivers, especially those who may be under the influence, from leaving the scene. When these drivers leave the scene, they are potentially removing evidence from the scene, resulting in an incomplete criminal investigation; but more importantly, they are failing to render necessary medical aid that could potentially mitigate the injuries suffered by the victim.

“To deter drivers from leaving the scene of an accident, AB 582 will increase the possible penalty for hit-and-runs resulting in permanent serious injury or death. By making this penalty more consistent with the penalties assessed for the crime of vehicular manslaughter, and making them greater than the penalty for a DUI, AB 582 will encourage drivers to stay at the scene of a crime, potentially saving the lives of innocent victims.”

5) **Argument in Opposition**: According to the *San Francisco Public Defenders Office*, “Although Vehicle Code Section 20001 is commonly known as ‘hit-and-run’, it is not necessary for the individual to have caused the motor vehicle accident or injury, but only to have been involved and then failed to remain at the scene and provide aid as needed. …

“Indeed, not infrequently in accidents caused by others, the individual may leave the scene for reasons that have nothing to do with avoiding liability for the accident but instead for any number of other grounds, including fear of losing their employment or deportation, lack of insurance, an expired license and traffic warrants due to unpaid traffic tickets. Over penalizing such harmless reasons with increased prison sentences and imposed additional fines is a waste of scarce societal resources.…

“This bill adds to the danger that California will return to prison overcrowding, potentially facing contempt of a federal court order and huge fines that it confronted only two years ago.
After obtaining several extensions in order to comply, California remains under a federal court order (Plata v. Schwarzenegger) to reduce its inmate population to 110,000.”

6) Prior Legislation: AB 2014 (E. Garcia), of the 2017-2018 Legislative Session, would have increased the penalty for fleeing the scene of an accident resulting in death or serious bodily injury from 16 months, two or three years in state prison to two, four, or six years in state prison. AB 2014 was heard in committee for testimony, but the final hearing for vote only was cancelled at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Fresno, District Attorney
Fresno County Sheriff
Fresno Deputy Sheriff’s Association
Fresno Police Department
Fresno Police Officers Association (FPOA)
Mothers Against Drunk Driving

Oppose

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
San Francisco Public Defender’s Office

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: March 19, 2019
Counsel: Matthew Fleming

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

AB 597 (Levine) – As Introduced February 14, 2019

As Proposed to be Amended by Committee

SUMMARY: Extends the sunset date by two years on the use of “flash incarceration,” which is a period of detention of up to ten days in a county jail without going before a judge, for a violation of an offender’s conditions of probation or mandatory supervision.

EXISTING LAW:

1) Defines “flash incarceration” as a period of detention in a county jail due to a violation of an offender’s conditions of probation or mandatory supervision. The length of the detention period may range between one and 10 consecutive days; specifies in cases where there are multiple violations in a single incident, only one flash incarceration booking is authorized and may range between one and 10 consecutive days. (Pen. Code §§ 1203.35, subd. (b), 3000.08, subd. (c), and 3454, subd. (c).)

2) States that in any case where the court grants probation or imposes a sentence that includes mandatory supervision, the county probation department is authorized to use flash incarceration for any violation of the conditions of probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration; prohibits the denial of probation based on a refusal to sign a waiver for flash incarceration. (Pen. Code § 1203.35, subd. (a)(1).)

3) Requires each county probation department to develop a response matrix that establishes protocols for the imposition of graduated sanctions for violations of the conditions of probation to determine appropriate interventions to include the use of flash incarceration. (Pen. Code § 1203.35, subd. (a)(2).)

4) Requires a supervisor to approve the term of flash incarceration prior to the imposition of flash incarceration. (Pen. Code § 1203.35, subd. (a)(3).)

5) Requires a probation officer, upon a decision to impose a period of flash incarceration, to notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration. (Pen. Code § 1203.35, subd. (a)(4).)

6) States that if the person on probation or mandatory supervision does not agree to accept a recommended period of flash incarceration, upon a determination that there has been a violation, the probation officer is authorized to address the alleged violation by filing a declaration or revocation request with the court. (Pen. Code § 1203.35, subd. (a)(5).)
7) Specifies that flash incarceration is not applicable to anyone put on probation for nonviolent drug possession, as specified. (Pen. Code § 1203.35, subd. (c).)

8) Sunsets the provisions related to flash incarceration for probationers and those on mandatory supervision on January 1, 2021. (Pen. Code § 1203.35, subd. (d).)

9) Authorizes intermediate sanctions, including flash incarceration, to be imposed on inmates released from prison after July 1, 2013 and subject to parole. (Pen. Code, § 3000.08, subd. (d).)

2) Authorizes intermediate sanctions, including flash incarceration, for violating the terms of post-release community supervision (PRCS). (Pen. Code, § 3454, subd. (b).)

4) Requires a person placed on PRCS to agree to specified conditions of release, including the waiver of the right to a court hearing prior to the imposition of a period of flash incarceration for any violation of his or her PRCS conditions. (Pen. Code, § 3453, subd. (q).)

5) Authorizes, as a general matter, the court to suspend a felony sentence and order the conditional and revocable release of the defendant in the community to probation supervision. (Pen. Code, § 1203.)

6) Provides if any probation officer, parole officer, or peace officer has probable cause to believe that a supervised person is violating any term or condition of his/her supervision, the officer may arrest the person without a warrant at any time and bring the person before the court for further disposition such as modification, revocation or termination of the person's supervision, as specified. (Pen. Code, § 1203.2.)

7) Gives the sentencing judge discretion to impose two types of sentences to county jail. The court may commit the defendant for the entire term allowed by law, or the court may impose a "split sentence" in which part of the term is served in custody and the remaining part of the term is comprised of a period of mandatory supervision. However, the presumption is that the defendant shall receive a split sentence, unless the court finds that, in the interests of justice, it is not appropriate in a particular case. (Pen. Code, §1170, subd. (h)(5).)

10) States that the traditional procedures used for violations of probation will now be applicable to violations of mandatory supervision. Also states that procedures used to modify probation are applicable to modify the conditions of mandatory supervision. (Pen. Code, §1170, subd. (h)(5)(B).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "As part of 2011 Public Safety Realignment (AB 109), probation was given the authority to use intermediate sanctions such as flash incarceration to address violations of conditions of supervision for Post-Release Community Supervision (PRCS) offenders. Additionally, SB 266 (Block, Statutes of 2015, Chapter 706) established the authority to also allow for flash incarceration as an evidence-based approach
to violations of supervision for people on traditional felony probation and Mandatory Supervision. SB 266 included a sunset of January 1, 2021.

"Flash incarceration is a period of detention in county jail triggered by a violation of a condition of probation. The length of the detention period can range from one to ten consecutive days. Intermediate sanctions, like flash, balance the need to hold offenders accountable for violations of their conditions of supervision while focusing on shorter disruptions from work, home, or programming which can result from longer term formal revocations.

"Absent flash incarceration as an intermediate response to violations, the existing mechanism to address violations of probation is to initiate formal revocation court proceedings which is a much lengthier process and can result in custody time up to 180 days."

"This bill would extend the sunset to January 1, 2026 and would continue to incorporate the following requirements:

- Allows a defendant to decline flash at any time and instead go through the court revocation proceedings and hearings
- Clarifies and prohibits that a defendant cannot be denied probation for refusal to sign the waiver
- Upon the imposition of flash, probation will notify the court, public defender, district attorney, and sheriff."

2) **Background on Flash Incarceration:** One of the components of criminal justice realignment was to restructure the State's parole system. Realignment shifted the supervision of some released prison inmates from the California Department of Corrections and Rehabilitation (CDCR) parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, § 3000.08. subds. (a) & (b).) All other inmates released from prison are subject to up to three years of PRCS under local supervision by probation departments. (Pen. Code, § 3451, subd. (a).)

With the creation of PRCS, the supervising agency was authorized to employ "flash incarceration" as an "intermediate sanction" for responding to both parole and PRCS violations. The Legislative Analyst's Office explained the context and reasoning behind "flash incarceration" as part of realignment: "[T]he realignment legislation provided counties with some additional options for how to manage the realigned offenders... [T]he legislation allows county probation officers to return offenders who violate the terms of their community supervision to jail for up to ten days, which is commonly referred to as "flash incarceration." The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal

Flash incarceration as a sanction for offenders under state supervision who violate a term of their parole became effective July 1, 2013. Despite the authority to impose flash incarceration upon state supervisees, CDCR’s Division of Adult Parole Operations (DAPO) made a policy decision not to utilize flash incarceration. (See Valdivia v. Brown, Response to May 6 Order, filed 05/28/13, p. 17.) DAPO appears to have changed that policy as of September, 2018. (CDCR, Notice of Change to Regulations, September 28, 2018, available at: https://www.cdc.ca.gov/Regulations/Adult_Operations/docs/NCDR/2018NCR/18-08/18-08.pdf, [as of March 13, 2019].) According to CDCR, they are in the process of evaluating whether and how often they will be using the sanction going forward.

3) **Flash Incarceration for Probation and Mandatory Supervision:** SB 266 (Block), Statutes of 2016, added Section 1203.35 to the Penal Code, extending the use of flash incarceration to defendants who were granted probation or placed on mandatory supervision. At the time of its enactment, SB 266 drew opposition based upon due process considerations. Because flash incarceration does not go through the court process, opponents were concerned about a potential lack of objectivity in implementing the sanction. The argument goes that liberty, once granted, is a substantial right that cannot be revoked without some level of due process under the law. (Morrissey v. Brewer (1972) 408 U.S. 471.) In *Morrissey*, the U.S. Supreme Court cautioned that “due process requires that this determination be made by somebody "not directly involved in the case," because “[t]he officer directly involved in making recommendations cannot always have complete objectivity in evaluating them.” (Id. at pp. 485-486.)

Proponents of flash incarceration counter argue that the sanction is less punitive than initiating a formal revocation proceeding because that process takes weeks and sometimes months, during which time the probationer/supervisee is waiting in jail. In addition, SB 266 sought to address due process in several ways. First, an offender has to agree to the use of flash incarceration as a condition of probation or mandatory supervision at the time of granting probation or ordering mandatory supervision. Additionally, it permitted a defendant to refuse the imposition of flash incarceration at the time a condition of release is violated, and instead request a revocation hearing in front of a judge. Finally, the legislation specifically stated that a refusal to sign a waiver cannot be used as a reason to deny probation.

The sponsor of this bill, the Chief Probation Officers of California has provided data regarding the use of flash incarceration for Marin County. Marin County used flash incarceration a total of 114 times. Average length of stay on a flash was between six and seven days. Ten people were flashed more than one time and no one refused the flash incarceration by opting to go through a formal revocation hearing in front of a judge.

4) **Argument in Support:** According to Public Defender for the County of Marin: “Marin County has a long history of adhering to evidence-based practices that work well for all involved. In Marin County flash incarceration is an evidence-based approach whose results have worked to create a quick, fair, and accountable system that is respected by our clients and which results on shorter disruptions from work, home, or programming for our clients. Further, intermediate sanctions like flash promote court and criminal justice system
efficiencies by avoiding unduly delayed violation hearings and instead allow clients and probation officers to solidify an accountability bond that results in better outcomes for our clients in Marin County.

"To date, not a single client has declined to take advantage of this voluntary condition. This speaks to the fairness in which it is administered in our county and the confidence our office has with how flash incarcerations are administered. My office works very closely with Marin County Probation as part of an ongoing dialogue on these types of arrests.

"The Marin County Public Defender’s Office enjoys a collegial relationship with its criminal justice partnership. We believe in a holistic defense philosophy and having a fair flash incarceration process available to our clients is a valuable tool in ultimately returning them to a life of freedom."

5) Prior Legislation:

a) SB 266 (Block), Chapter 706, Statutes of 2016, authorized the use of flash incarceration on defendants granted probation or placed on mandatory supervision.

b) SB 419 (Block), of the 2013-2014 Legislative session, would have authorized the use of flash incarceration on defendants granted probation or placed on mandatory supervision. SB 419 was amended into a different subject matter.

c) AB 986 (Bradford), Chapter 788, Statutes of 2013, authorized a person on postrelease community supervision (PRCS) or on parole to serve a period of flash incarceration in a city jail.

d) AB 109 (Committee on Budget) Chapter 15, Statutes of 2011, enacted criminal justice "realignment," among other things, restructured the State's parole system, shifting the supervision of some released prison inmates from CDCR parole agents to local probation departments.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers’ of California (Sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
California State Association of Counties
County of Marin, Public Defender

Opposition

None

Analysis Prepared by:  Matthew Fleming / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-597 (Levine (A))

Mock-up based on Version Number 99 - Introduced 2/14/19
Submitted by: Matthew Fleming, Assembly Committee on Public Safety

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

SECTION 1. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court containing findings and recommendations, including recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in the report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires that person to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation report recommends that registration be ordered at sentencing pursuant to Section 290.006, the probation officer’s report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.
(D) The probation officer may also include in the report recommendations for both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires that person to register as a sex offender pursuant to Sections 290 to 290.023, inclusive, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender pursuant to Section 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections
290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit the person to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or the person’s arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which that person has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which that person has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 287, 288, or 288.5, or of former Section 288a, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if that person committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or the person’s arrest for the previous crime, the person was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.
(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 33215, a machinegun under Section 32625, or a silencer under Section 33410.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in subdivision (b) or (c) of Section 27590.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in their discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court containing findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) A probationer shall not be released to enter another state unless the case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175))
of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over their probation case the reasonable costs of processing the request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant’s ability to pay restitution, in which case the county financial evaluation officer shall report the findings regarding restitution and other court-related costs to the probation officer on the question of the defendant’s ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant’s probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

(l) For any person granted probation prior to January 1, 2026, at the time the court imposes probation, the court may take a waiver from the defendant permitting flash incarceration by the probation officer, pursuant to Section 1203.35.

SEC. 2. Section 1203.35 of the Penal Code is amended to read:

1203.35. (a) (1) In any case where the court grants probation or imposes a sentence that includes mandatory supervision, the county probation department is authorized to use flash incarceration for any violation of the conditions of probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration. Probation shall not be denied for refusal to sign the waiver.

(2) Each county probation department shall develop a response matrix that establishes protocols for the imposition of graduated sanctions for violations of the conditions of probation to determine appropriate interventions to include the use of flash incarceration.

(3) A supervisor shall approve the term of flash incarceration prior to the imposition of flash incarceration.

(4) Upon a decision to impose a period of flash incarceration, the probation department shall notify the court, public defender, district attorney, and sheriff of each imposition of flash incarceration.
(5) If the person on probation or mandatory supervision does not agree to accept a recommended period of flash incarceration, upon a determination that there has been a violation, the probation officer is authorized to address the alleged violation by filing a declaration or revocation request with the court.

(b) For purposes of this section, “flash incarceration” is a period of detention in a county jail due to a violation of an offender’s conditions of probation or mandatory supervision. The length of the detention period may range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of an offender’s conditions of probation or mandatory supervision shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer periods of detention. In cases where there are multiple violations in a single incident, only one flash incarceration booking is authorized and may range between one and 10 consecutive days.

(c) This section shall not apply to any defendant sentenced pursuant to Section 1210.1.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

SEC. 3. Section 4019 of the Penal Code, as amended by Section 5 of Chapter 1008 of the Statutes of 2018, is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.
(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner’s period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner’s period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

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(i) (1) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(2) Credits earned pursuant to this section for a period of flash incarceration pursuant to Section 1203.35 shall, if the person’s probation or mandatory supervision is revoked, count towards the term to be served.

(i) This section shall remain in effect only until January 1, 20263, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 20263, deletes or extends that date.

SEC. 4. Section 4019 of the Penal Code, as amended by Section 6 of Chapter 1008 of the Statutes of 2018, is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

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(8) When a prisoner is confined in or committed to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner’s period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner’s period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(j) This section shall become operative on January 1, 2026.
SUMMARY: Clarifies that a member of the University of California Police Department who has qualified for and accepted duty disability income or equivalent status under the University of California Retirement Plan is an "honorably retired peace officer" for the purpose of exemption from the ban on possession of large-capacity magazines, and the carrying of a loaded concealed firearm.

EXISTING LAW:

1) Defines a "large-capacity magazine" as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

   a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;

   b) A .22 caliber tube ammunition feeding device; or,

   c) A tubular magazine that is contained in a lever-action firearm. (Pen. Code, § 16740.)

2) Mandates that a person who, prior to July 1, 2017, legally possessed a large-capacity magazine shall dispose of that magazine by any of the following means:

   a) Remove the large-capacity magazine from the state;

   b) Sell the large-capacity magazine to a licensed firearms dealer;

   c) Destroy the large-capacity magazine; or,

   d) Surrender the large-capacity magazine to a law enforcement agency for destruction. (Pen. Code, § 32310, subd. (d).)

3) Provides that, commencing July 1, 2017, any person that possesses a large-capacity magazine is guilty of an infraction punishable by a fine not to exceed $100 per large-capacity magazine or is guilty of a misdemeanor punishable by a fine not to exceed $100 per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment. (Pen. Code, § 32310 subd. (c).)
4) Exempts the following individuals and entities from the large-capacity magazine ban:

a) An individual who honorably retired from being a sworn peace officer, or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer’s duties;

b) A federal, state, or local historical society, museum or institutional society, or museum or institutional collection, that is open to the public, provided that the large-capacity magazine is unloaded, properly housed within secured premises, and secured from unauthorized handling;

c) A person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition, and possessed it no longer than necessary to deliver or transport it to the nearest law enforcement agency;

d) A forensic laboratory, or an authorized agent or employee thereof in the course and scope of his or her authorized activities;

e) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine; or,

f) A person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm. (Pen. Code, § 32406.)

5) Defines "honorably retired" includes any peace officer who has qualified for, and has accepted, a service or disability retirement. As used in those provisions, "honorably retired" does not include an officer who has agreed to a service retirement in lieu of termination. (Pen. Code, § 11690.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "While California State University officers can be considered ‘honorably retired’ when receiving disability retirement pay, several retired University of California peace officers have been denied this title and therefore have been treated differently due to a small difference in terminology.

"Dennis Mueller, who joined the University of California Santa Barbara Police Department in 1980 and was injured on duty in 1997, was considered ‘honorably retired’ until 2013 when was informed by the University that he would not be receiving any more renewals for his conceal carry permit.

"Ally Jacobs, the University of California Berkeley police officer who helped rescue kidnapping victim Jaycee Dugard, suffered an on-duty injury in 2010 and accepted "Duty
Disability Income.’ She has continually been denied an ‘honorably retired’ identification card and concealed carry permit.

“State law simply needs a technical change to ensure University of California peace officers receive the same rights as their California State University counterparts.

“AB 603 ensures all ‘duty disabled’ UC peace officers and all other types of honorably retired officers in this state are treated equally by clarifying those who receive ‘Duty Disability Income’ would be considered ‘honorably retired’ so they can receive identification cards and concealed carry weapon permits.

2) **Prior Legislation:** AB 1192 (Lackey), Chapter 63, Statutes of 2018, exempted retired Level I reserve peace officers who meet specified length of service requirements from the ban on possessing a high capacity magazine.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Federated University Police Officers Association

**Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
Date of Hearing: March 19, 2019
Counsel: Nikki Moore

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

AB 607 (Carrillo) – As Introduced February 14, 2019

SUMMARY: Authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation is prohibited.

EXISTING LAW:

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

2) Prohibits the granting of probation to any person who is convicted of violating the following drug crimes:
   a) Possession for sale of 14.25 grams or more of a substance containing heroin;
   b) Sale of, or offering to sell, 14.25 grams or more of a substance containing of heroin;
   c) Possession for sale, sale, or offering to sell heroin, with one or more prior convictions for those offenses;
   d) Possession for sale of 14.25 grams or more of any salt or solution of phencyclidine (PCP), or any of its analogs or precursors;
   e) Transporting for sale, importing for sale, administering, or offering to transport for sale, import for sale, or administer, or attempt to import for sale or transport for sale, PCP or any of its analogs or precursors;
   f) Sale of, or offering to sell, PCP or any of its analogs or precursors;
   g) Manufacture of PCP or any of its analogs or precursors, as specified;
   h) Using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture or sell any specified controlled substance;
   i) Using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor be in possession of PCP for sale, sells, distributes, or transports PCP, or manufactures PCP or any of its analogs or precursors;
j) Possession of specified substances, with intent to manufacture PCP or any of its analogs; and,

k) Possession for sale, sale, or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for those offenses. (Pen. Code, § 1203.07, subd. (a).)

3) Requires the existence of any fact which makes the defendant ineligible for probation to be alleged in the charging document, and either admitted by the defendant or found to be true by the trier of fact. (Pen. Code, § 1203.07, subd. (b).)

4) Restricts the granting of probation, except in an unusual case where the interests of justice would be served, when a defendant is convicted of the following drug crimes:

a) Possession for sale or sale of a substance containing 28.5 grams or more of cocaine or cocaine base;

b) Possession for sale or sale of a substance containing 28.5 grams or more of methamphetamine;

c) Manufacture of specified controlled substances, except PCP;

d) Using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base, cocaine, or methamphetamine; and,

e) Manufacture or sale of methamphetamine, with one or more specified prior convictions involving methamphetamine; (Pen. Code, § 1203.073, subds. (a) & (b).)

5) Requires the existence of any fact which makes the defendant presumptively ineligible for probation to be alleged in the charging document, and either admitted by the defendant or found to be true by the trier of fact. (Pen. Code, § 1203.073, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, “Mandatory minimum sentences for nonviolent drug crimes force judges to incarcerate individuals who would be better treated and supervised in the community. Leaders of both parties want to end mandatory minimums as part of the incremental unwinding of over-sentencing and mass incarceration. Mass incarceration costs California billions of dollars that the state should instead invest in schools, infrastructure, healthcare and other areas to make our communities and economy stronger.

“AB 607 is an incremental reform to return discretion to the courts. The bill provides defendants with probation supervision and programming when it is in the interest of justice, the interest of public safety and consistent with the values of local communities.”

2) Probation Eligibility: Probation suspends a criminal sentence and orders the conditional release of a person to the community. (Pen. Code, § 1203, subd. (a).)
As a general rule, most felony and misdemeanor cases are eligible for probation. However, a number of statutes prohibit the granting of probation for certain crimes or offenders, including for certain violent felonies, certain drug offenses, and specified crimes when defendant inflicts great bodily injury. For a defendant to be ineligible for probation, facts supporting the denial of probation must be alleged in the accusatory pleading and either admitted by the defendant in open court, or found to be true by the jury or judge. (People v. Lo Cicero (1969) 71 Cal.2d 1186, 1192-1193.)

There are other circumstances and enumerated offenses where a person is presumptively ineligible for probation and for which probation may be granted only in unusual circumstances, where the interests of justice would best be served if the person is granted probation. Some examples include use of a weapon during the commission of a crime, infliction of great bodily injury during the commission of the offense crime, a defendant previously convicted of two or more felonies, theft cases involving over $100,000, using, soliciting, or encouraging a minor to commit a felony, and certain drug offenses. In those cases, the defendant bears the burden of demonstrating that his or her case is the unusual case in which justice would be served by a granting of probation.

The Rules of Court list certain factors that guide the court in determining when unusual circumstances may warrant probation eligibility when a person is presumptively ineligible. Specifically, the court may consider whether the factor giving rise to the probation limitation is less serious than typically present coupled with the defendant’s lack of similar criminal history. (Cal. Rules of Court, rule 4.413(c)(1)(A)). The court may also consider whether the current offense is less serious than a prior conviction which is the basis for the probation limitation, coupled with the defendant remaining free from incarceration for a substantial time before the present offense. (Cal. Rules of Court, rule 4.413(c)(1)(B)). Finally, the court may also consider factors not amounting to a defense, but reducing culpability, including: (1) that the defendant participated in the crime under provocation, coercion or duress and does not have a recent record involving crimes of violence; (2) that the defendant committed the crime because of a mental condition and there is a likelihood that he or she would respond to treatment that would be required as a condition of probation. (Cal. Rules of Court, rule 4.413(c)(2).) The trial court may, but is not required to, find the case unusual if the relevant criteria is met. (People v. Cattaneo (1990) 217 Cal.App.3d 1577, 1587.) In this respect, the court has broad discretion and its decision will only be overturned if there was an abuse of discretion. (People v. Superior Court (Du) (1992) 5 Cal.App.4th 822, 831.)

This bill would allow a court to grant probation for controlled substance offenses that are currently either ineligible or presumptively-ineligible for probation, except in those cases in which a person uses, solicits, induces, encourages, or intimidates a minor to act as an agent to manufacture or sell controlled substances.

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1 After the trial court determines that the presumption against probation is overcome, it then must evaluate whether or not to grant probation using the suitability factors listed in the Rules of Court. (See Cal. Rules of Court, rule 4.414.)
3) **Argument in Support:** According to the *Drug Policy Alliance*, a co-sponsor of the bill, "AB 607 will not change the upper penalty for any offense, but will provide judges the discretion to grant probation or to suspend a sentence in the interests of justice, and consistent with local values and local resources. Current state law ties the hands of judges, prohibiting them from ordering probation or suspending a sentence for a person convicted of nonviolent drug offenses, including possessing or agreeing to sell or transport opiates or opium derivatives, possessing or transporting cannabis, planting or cultivating peyote, and various crimes relating to forging or altering prescriptions, if the person has previously been convicted of any one of an expansive list of drug felonies. Existing law also prohibits judges from granting probation or suspending a sentence for persons convicted of specified nonviolent drug offenses, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, even if it is their first offense.

"Precluding probation eligibility for these offenses requires a mandatory term of incarceration ranging from two to seven or more years depending on the offense. By allowing judges the discretion to grant probation, this bill reflects the growing bipartisan consensus that mandatory minimum sentencing has failed to protect or enhance public safety, and robbed judges of their traditional and appropriate role in weighing the facts of each case before imposing a sentence. There is ample evidence that long sentences and mandatory minimums have had no effect on the availability, cost or potency of controlled substances. Controlled substances are cheaper, stronger and more widely available than in any time in our nation’s history.

"Advocates from across the political spectrum recognize that mandatory sentences are unjust and ineffective."

4) **Related Legislation:**

a) **AB 433 (Ramos),** would require that the prosecuting attorney and victim be given 30 days' written notice prior to a hearing to terminate probation early. This bill is currently before the Assembly Committee on Public Safety.

b) **AB 484 (Jones-Sawyer),** would eliminate the mandatory confinement period of 180 days in the county jail as a required condition for persons sentenced to probation for specified controlled substance offenses. AB 484 is currently before the Public Safety Committee.

c) **AB 1421 (Bauer-Kahan),** would prohibit the revocation of probation for failure of a person to pay fines, fees, or assessments, unless the court determines that the defendant has willfully failed to pay the fines, fees, or assessments and has the ability to pay. AB 1421 is currently before the Public Safety Committee.

5) **Prior Legislation:** **SB 1025 (Skinner),** of the 2017-2018 legislative session, would have authorized the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation is prohibited. SB 1025 was not taken up on the Assembly Floor.
REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
California Public Defenders Association (Co-Sponsor)
American Civil Liberties Union of California
California Attorneys for Criminal Justice
Californians for Safety and Justice
Consumer Attorneys of California
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Legal Services For Prisoners with Children
San Francisco Public Defender's Office
Tides Advocacy
United Domestic Workers of America-AFSCME Local 3930/AFL-CIO

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
Date of Hearing: March 19, 2019
Counsel: David Billingsley

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

AB 611 (Nazarian) – As Introduced February 14, 2019

SUMMARY: Prohibits sexual contact, as defined, with any animal. Requires a person convicted of a violation of sexual contact with an animal to participate counseling as directed by the court. Provides for seizure and forfeiture of animals in involved in such violations. Specifically, this bill:

1) States that every person who has sexual contact with an animal is guilty of a misdemeanor.

2) Defines the following terms for purposes of this bill:

   a) “Animal” means “any nonhuman creature, whether alive or dead”; and

   b) “Sexual contact” means “any act, committed for the purpose of sexual arousal or gratification, abuse, or financial gain, between a person and an animal involving contact between the sex organs or anus of one and the mouth, sex organs, or anus of the other, or, without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.”

3) Specifies that if a defendant is granted probation for a conviction for sexual contact with an animal, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders.

4) States that if the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant’s ability to pay.

5) Provides that an indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care or the targeted population criteria.

6) Specifies that the counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine.

7) States that the counseling is a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment or county jail when that sentence is otherwise
appropriate.

8) Specifies that any authorized officer investigating a violation of sexual contact with an animal may seize an animal that has been used in the commission of an offense to protect the health or safety of the animal or the health or safety of others, and to obtain evidence of the offense.

9) Requires any animal seized be promptly taken to a shelter facility or veterinary clinic to be examined by a veterinarian for evidence of sexual contact. The animal shall be maintained at such a facility until disposition by the court or until a decision has been made to not file a complaint.

10) Applies specified animal seizure and animal forfeiture provisions from existing law to the provisions of this bill.

11) States that upon the conviction for sexual contact with an animal, all animals lawfully seized and impounded with respect to the violation shall be forfeited and transferred to the impounding officer or appropriate public entity for proper adoption or other disposition.

12) Specifies that a person convicted of a violation of sexual contact with an animal be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition.

13) Requires a veterinarian that has reasonable cause to believe an animal under its care has been a victim of sexual abuse, to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred.

EXISTING LAW:

1) States that any person who sexually assaults specified animals for the purpose of arousing or gratifying the sexual desire of the person is guilty of a misdemeanor. (Pen. Code, § 286.5.)

2) Specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)

3) Specifies when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor as a criminal offense. (Pen. Code, § 597, subd. (b).)

4) Specifies the actions of a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as specified as a criminal offense.
5) States that a violation of animal cruelty may be punished as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars ($20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both that fine and imprisonment. (Pen. Code, § 597, subd. (d).)

6) Specifies that upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as specified, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Pen. Code, § 597, subd. (g).)

7) Requires that if a defendant is granted probation for a conviction animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

8) States that the court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or residing with, animals of any kind, and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. (Pen. Code, § 597.1, subd. (l))

9) States that any person who has been convicted of a misdemeanor violation of animal cruelty, as specified, and who, within five years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a crime, punishable by a fine of one thousand dollars ($1,000). (Pen. Code, § 597.9, subd. (a).)

10) States that any person who has been convicted of a felony violation of animal cruelty, as specified, and who, within 10 years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a public offense, punishable by a fine of one thousand dollars ($1,000). (Pen. Code, § 597.9, subd. (a).)

11) Allows a defendant to petition the court to reduce the duration of the mandatory ownership prohibition. Upon receipt of a petition from the defendant, the court shall set a hearing to be conducted within 30 days after the filing of the petition. At the hearing, the petitioner shall
have the burden of establishing by a preponderance of the evidence all of the following: (Pen. Code, § 597.9, subd. (d)(1)(a)-(c).)

a) He or she does not present a danger to animals;

b) He or she has the ability to properly care for all animals in his or her possession; and

c) He or she has successfully completed all classes or counseling ordered by the court.

12) Specifies that if the petitioner has met his or her burden, the court may reduce the mandatory ownership prohibition and may order that the defendant comply with reasonable and unannounced inspections by animal control agencies or law enforcement. (Pen. Code, § 597.9, subd. (d)(2).)

13) States that specified animal shelters, rescue, or adoption organizations, may ask an individual who is attempting to adopt an animal from that entity whether he or she is prohibited from owning an animal.

14) States whenever a veterinarian has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as specified, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. (Business and Prof. Code, § 4830.7.)

15) States that any person, who violates specified laws governing veterinary medicine, is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars, nor more than two thousand dollars, or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. (Business and Prof. Code, § 4831.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "Protecting animals, including our pets, from sexual abuse should be an important goal in California and across the nation. Currently California law is vague and only prohibits the sexual assault of an animal without defining sexual assault. Sexual abuse of our furry or feathered friends should be clearly prohibited by California law. In addition, similar to human trafficking victims, animals are trafficked, sold, and traded for sex. Whether it is because of the special bond between pets and humans, or because there is a need to protect those who can’t speak for themselves, animal sexual abuse laws are essential to keeping our public safe. Passage of this bill will signal that California will not tolerate those who engage in such egregious acts."

2) **Animal Sexual Abuse:** California created a statute to criminalize animal sexual assault in 1975. That prohibition is codified in Penal Code section 286.5 which makes it a crime for "any person who sexually assaults specified animals for the purpose of arousing or gratifying the sexual desire of the person. " That law has not been amended since it was enacted in 1975.
The phrase “sexual assault” is not a phrase which is generally used in California law to describe and delineate criminal conduct. As such, the use of the phrase “sexual assault” in the existing statute does not provide effective guidance in terms of the type of conduct which is prohibited.

This bill would specify what constitutes unlawful conduct by defining “sexual contact” as “any act, committed for the purpose of sexual arousal or gratification, abuse, or financial gain, between a person and an animal involving contact between the sex organs or anus of one and the mouth, sex organs, or anus of the other, or, without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.”

In addition to providing clarifying language, this bill would conform the crime of sexual contact with an animal to the manner in which animal abuse is generally treated under California law. This bill would also specify that upon conviction for animal sexual abuse, any animal seized in connection with the case is forfeited. An individual convicted under the provisions of this bill would be prohibited from owning an animal for a period of five years. Additionally, this bill would require that a person convicted of sexual contact with an animal participate in counseling as directed by the court.

3) **Animal Abuse Statute Already Covers Conduct that Results in Suffering or Abuse:**

Animal abuse is prohibited in Penal Code section 597. The following conduct is illegal and is included within section 597:

Every person who overdrives, overloads, drives when overloaded, overworks, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for each offense, guilty of a crime. (Pen. Code, § 597, subd. (b).)

The conduct described above can be charged at a felony or misdemeanor level. If sexual contact with an animal result in in suffering, inflicts unnecessary cruelty on the animal, or in any manner abuses the animal, such conduct can be charged as a felony under the more general animal abuse statute.

4) **Requirement that Veterinarians Report Animal Sexual Abuse:** Current law requires a veterinarian to report suspected animal abuse to law enforcement.

Whenever any licensee under this chapter has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as specified, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. (Business and Prof. Code, § 4830.7.)
This bill would impose the same requirement if the veterinarian suspects unlawful sexual contact of an animal. A failure to report animal abuse under current is a crime punishable as a misdemeanor. It is not clear that exposing a veterinarian to criminal penalties for failing to report suspected unlawful sexual contact with an animal is a feasible or appropriate requirement from a policy standpoint.

For general instances of animal abuse, the veterinarian will see physical signs of abuse. Physical injuries to the animal can be indicative of physical abuse. A malnourished animal can be indicative of neglect. To the extent that a veterinarian identifies signs that an animal has had sexual contact, it is not obvious how a veterinarian would determine if the sexual contact was between a human and an animal, or if it was sexual contact between animals. Is this bill imposing a requirement on veterinarians that is difficult for a veterinarian to comply with and then threatening the veterinarian with criminal liability for failing to comply with a difficult requirement?

Any suspected sexual contact that resulted in physical injury to the animal would be covered by existing law would trigger a duty to report. Adding sexual contact to the reporting requirement might only serve to muddy the waters regarding reporting, while creating criminal liability for failing to report conduct that would be hard for the veterinarian to determine.

5) **Argument in Support**: According to the *Animal Legal Defense Fund*, “In our work opposing animal cruelty, we too often hear of cases where animals have been subject to sexualized abuse, including the very sort of assaults this bill would prohibit. We know that the sexual abuse of an animal can take many different forms, and may coincide with other modes of exploitation. These assaults result in a variety of harms to the animal victim, including psychological trauma, physical injury, and death.

“Our work also makes us aware of a growing body of data on bestiality, indicating that sexual abuse and exploitation of animals endangers both animals and humans. As with other forms of animal abuse, bestiality overlaps significantly with violence perpetrated against humans, including domestic violence, sexual assault, and child abuse. Therefore enabling the law to effectively intervene on behalf of animal victims of bestiality benefits human victims as well, and may in fact prevent future crimes against humans.

“Unfortunately, despite the dangers posed by bestiality both to animals and humans, California’s current law does not adequately address these concerns. The current law narrowly defines sexual assault of an animal, omitting a number of different methods of assault and related forms of exploitation. Assembly Bill 611 would not only expand this definition, but would also prevent future violations by prohibiting convicted offenders from owning animals.

“Finally, this bill will require veterinarians to report signs of animal sexual abuse to law enforcement, and will grant veterinarians civil immunity for reporting. Often veterinarians are the only people, other than the abuser himself, to see signs of animal cruelty. Veterinarians also possess the requisite knowledge and experience to identify those signs of abuse. It is therefore vital that the law empower veterinarians to report suspected sexual abuse of animals, as veterinarians are already required to do for other forms of animal
cruelty."

6) Related Legislation:

a) SB 580 (Wilk), would require a defendant convicted of specified offenses against animals to undergo a psychological or psychiatric evaluation and to undergo any treatment that the court determines to be appropriate after considering the evaluation. SB 580 is set for hearing in the Senate Public Safety Committee on April 9, 2019.

b) AB 169 (Lackey), expands the crime of causing injury to, or the death of, any guide, signal, or service dog, and adds the medical expenses and lost wages of the owner to the existing list of recoverable restitution costs. AB 169 is awaiting hearing in the Assembly Appropriations Committee.

7) Prior Legislation:

a) AB 3040 (Nazarian), of the 2017-2018 Legislative Session, would have prohibited sexual contact, as defined, with any animal. This bill is a reintroduction of AB 3040. AB 3040 was held on the Senate Appropriation Committee's Suspense File.

b) AB 2774 (Limon), Chapter 877, Statutes of 2018, authorized an animal shelter, as specified, to ask a person that is seeking to adopt in animal if they are prohibited from owning an animal.

c) AB 628 (Chen), of the 2017-2018 Legislative Session, would have clarified procedures for notification of animal owners regarding hearings and payment of costs when an animal is seized or impounded. AB 628 was never heard in the Assembly Public Safety Committee.

d) AB 2278 (Levine), of the 2015-2015 Legislative Session, would have clarified procedures for notification of animal owners regarding hearings and payment of costs when an animal is seized or impounded. AB 2278 was held in the Senate Appropriations Committee.

e) AB 794 (Linder), Chapter 201, Statutes of 2015, expanded criminal acts against law enforcement animals to include offenses against animals used by volunteers acting under the direct supervision of a peace officer.

f) SB 1500 (Lieu), Chapter 598, Statutes of 2012, allows pre-conviction forfeiture of an individual’s seized animals in animal abuse and neglect cases.

REGISTERED SUPPORT / OPPOSITION:

Support

Animal Legal Defense Fund
California Animal Welfare Association
Humane Society of the United States
Humane Society Veterinary Medical Association
Marin Humane
National Link Coalition
PawPAC
Social Compassion in Legislation

Opposition

None

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

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

1) States that prior to an interrogation of a peace officer as part of an administrative disciplinary proceeding the officer shall be informed of the following, to the extent that the information is reasonably known to the agency:

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

b) The location of any incident at issue; and

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

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

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

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

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

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

EXISTING LAW:

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

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

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

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

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

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

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

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

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

   e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action; (Gov. Code, §
f) The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent; (Gov. Code, § 3303, subd. (e).)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

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

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

... to require disclosure of crucial information about an ongoing investigation to its subject before interrogation would be contrary to sound investigative practices. During an interrogation, investigators might want to use some of the information they have amassed to aid in eliciting truthful statements from the person they are questioning. Mandatory preinterrogation discovery would deprive investigators of this potentially effective tool and impair the reliability of the investigation. This is true in any interrogation, whether its purpose is to ferret out criminal culpability or, as in this case, to determine if a peace officer used a mailing list in contravention of a direct order by his superiors. Pasadena Police Officers Assn. vs. City of Pasadena
51 Cal.3d 564.

This bill would require the following disclosures to the officer prior to the interrogation:

The time and date of any incident at issue;

The location of any incident at issue;

The internal affairs case number, if any;

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

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

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

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

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

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

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

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

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

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

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

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

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

8) **Prior Legislation:**

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Orange County Deputy Sheriffs (Sponsor)
California Fraternal Order of Police (Sponsor)
Long Beach Police Officers Association (Sponsor)
Sacramento County Deputy Sheriffs Association (Sponsor)
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Correctional Peace Officers Association
California Correctional Supervisors Organization
California Narcotic Officers' Association
California Statewide Law Enforcement Association
Los Angeles County Professional Peace Officers Association
Riverside Sheriffs' Association

Oppose

American Civil Liberties Union of California
California Civil Liberties Advocacy
California Public Defenders Association
ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair  

AB 401 (Flora) – As Amended March 4, 2019

VOTE TO GRANT RECONSIDERATION

SUMMARY: Makes specified offenses for repeat driving under the influence (DUI) a straight felony, rather than an alternate felony or misdemeanor (wobbler). Specifically, this bill:

1) Makes a conviction for driving under the influence that occurs within 10 years after four or more previous specified convictions, only punishable as felony.

2) Specifies that if a person is convicted of driving under the influence and the offense occurred within 10 years after a previous specified felony DUI conviction, the current offense would be punishable only as a felony.

3) Requires a court, upon convicting a person for a specified offense of driving under the influence that occurred within 10 years after a previous conviction or convictions, for specified DUI related offenses, to order that person’s vehicle to be impounded for not less than 30 days nor more than 90 days.

4) Requires a court, upon convicting a person for a specified offense of driving under the influence that occurred within 10 years after the first of two or more specified prior DUI related offenses, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner’s expense for not less than 90 days nor more than 180 days.

5) Requires the court to declare the person’s vehicle a nuisance and have it seized and sold, as specified, if the person has been convicted as described below:

   a) A violation of vehicular homicide while intoxicated, as specified;

   b) A violation of DUI that occurred within 10 years after one or more separate DUI related offenses, as specified;

   c) A violation of DUI with injury that occurred within 10 years after one or more separate DUI related offenses, as specified; or,

   d) A violation of Section DUI that occurred within 10 years after the first of two or more separate offenses of DUI that resulted in convictions.
EXISTING LAW:

1) States that a person is guilty of a felony or a misdemeanor, with a maximum sentence of three years in the state prison (felony) or one year in the county jail (misdemeanor), if that person is convicted of a violation of DUI or DUI w/injury, and the offense occurred within 10 years of any of the following: (Veh. Code, § 23550.5, (subd. (a).)

a) A separate violation of DUI that was punished as a felony as specified;

b) A separate violation of DUI w/injury that was punished as a felony; or,

c) A separate violation of vehicular manslaughter, as specified, that was punished as a felony.

2) Specifies that each person who, having previously been convicted of gross vehicular manslaughter while intoxicated, a felony for vehicular manslaughter while intoxicated, or vehicular manslaughter by means of a boat, as specified, is subsequently convicted of a violation of DUI or DUI with injury is guilty of a felony or a misdemeanor, with a maximum sentence of three years in the state prison (felony) or one year in the county jail (misdemeanor). (Veh. Code, § 23550.5, (subd. (b).)

3) Requires the driving privileges of a person convicted of a violation listed above be revoked, as specified. (Veh. Code, § 23550.5, (subd. (c).)

4) States that if a person is convicted of a violation of DUI and the offense occurred within 10 years of three or more separate violations of DUI, as specified, that resulted in convictions, that person can be punished as a felony or a misdemeanor, with a maximum of three years in the county jail pursuant to realignment (felony), or one year in the county jail (misdemeanor). (Veh. Code, § 23550, subd. (a).)

5) States that a person convicted of a violation of DUI or DUI w/injury as described above, shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. (Veh. Code, §§ 23550, subd (b), 23550.5, (subd. (d).)

6) States that the interest of any registered owner of a car that has been used in the commission of a violation of DUI or DUI with injury for which the owner was convicted, is subject to discretionary impoundment, except as specified, for not less than one nor more than 30 days. (Veh. Code, § 23594, subd (a).)

7) Specifies that if the DUI or DUI with injury offense occurred within five years of a prior offense for DUI, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner’s expense for not less than one nor more than 30 days. (Veh. Code, § 23594, subd (a).)

8) States that if the DUI or DUI with injury occurred within five years of two or more prior offenses which resulted in convictions of violations of DUI, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true, the court shall,
except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner’s expense for not less than one nor more than 90 days. (Veh. Code, § 23594, subd (a).)

9) States that a court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender’s family, impair the ability of the offender or the offender’s family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. (Veh. Code, § 23594, subd (a).)

10) Specifies that no vehicle which may be lawfully driven on the highway with a class C or class M driver’s license, as specified, is subject to impoundment as described above, if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the defendant’s immediate family which may be operated on the highway with a class C or class M driver’s license. (Veh. Code, § 23594, subd (b).)

11) Specifies that upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle. (Veh. Code, § 23596, subd. (a)(1).):

a) A violation of vehicular homicide while intoxicated, as specified.

b) A violation of Section DUI that occurred within seven years of two or more separate offenses of vehicular homicide while intoxicated, as specified, or DUI, as specified, or any combination thereof, that resulted in convictions.

c) A violation of DUI with injury that occurred within seven years of one or more separate offenses of vehicular homicide while intoxicated, as specified, or DUI, as specified, or any combination thereof, that resulted in convictions.

12) States that upon the conviction of the defendant and at the time of sentence, the court with jurisdiction over the offense shall order a vehicle declared to be a nuisance to be sold, except as specified. (Veh. Code, § 23596, subd. (b)-(f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “If someone gets a DUI and pays their debt to society, then that’s a mistake worthy of forgiveness. If someone gets 5 DUID’s, then that’s probably a character trait and they are a threat to our communities. They can still be rehabilitated, but first we need to make sure they are no longer a danger to themselves or to others.”

2) “Wobbler” Offenses: A “wobbler” is a crime that can charged as, and result in a conviction for, a felony or a misdemeanor. A district attorney has the discretion to charge a “wobbler”
as a felony or a misdemeanor. If a defendant is charged with a felony for a crime that is a “wobbler” a judge has discretion, under certain circumstances, to reduce the charge to a misdemeanor, or sentence the defendant as a misdemeanor. The DUI crimes which are the subject of this bill are “wobblers.” This bill would remove discretion from district attorneys and judges in specified DUI “wobbler” cases where the individual has one or more prior DUI related offense, by reclassifying the crimes as straight felonies.

3) **Current Law Provides District Attorneys and Judges Discretion to Set the Level of Offenses Described in This Bill as Felonies or Misdemeanors:** Under existing law, a DUI offense that does not involve injury is generally a misdemeanor. However, if an individual has a specified number of prior convictions within a 10 year period, or has a single prior conviction within 10 years of more serious DUI convictions, the individual can be charged with a felony, but such a charge is not mandated. Under those circumstances, the crime is a “wobbler.” The district attorney making the decision to charge the case in criminal court has the option to charge such a crime as a felony or a misdemeanor. In evaluating whether to charge the case as a misdemeanor or felony, the district attorney typically looks at the extent and nature of the defendant’s prior record and the facts of the current. If a “wobbler” is charged as a felony, the district attorney might consider other evidence presented by the defendant regarding his or her circumstances in mitigation, or efforts to address the problems underlying the crime, that might make it appropriate to settle the case by plea bargain, at a misdemeanor level. If the defendant was charged with a felony, and was convicted at trial, a judge would have discretion to evaluate all of the evidence to decide how to sentence the defendant. The court would look at the evidence presented at trial, the defendant’s prior history, and any mitigating or aggravating evidence presented at a sentencing hearing to make the sentencing decision. Current law would provide the court discretion to sentence the defendant on the crime as a misdemeanor, if the circumstances warranted it. This bill would remove discretion and flexibility for these particular cases.

The discretion provided under current law can also allow a Judge to establish an incentive for a defendant convicted of a wobbler DUI as a felony to perform well on probation in order to have the opportunity for the charge to be reduced to a misdemeanor in the future. A plea negotiation might include an agreement that the felony conviction can be reduced to a misdemeanor if a person completes a residential alcohol program, or meets other benchmarks designed to ensure that the individual is addressing an alcohol problem. Flexibility in setting up such incentives is reduced if these offense are no longer “wobblers.”

4) **This Bill Would Require the Court to Declare Vehicles a Nuisance, Subject to Seizure and Sale, Where Current Law Makes Such a Declaration Discretionary:** Current Law allows the court to declare a defendant’s car a nuisance for specified DUI offenses. When the court declares the car a nuisance, the car is seized and sold after conviction, as specified. The seizure and sale of vehicles as punishment tends to disproportionately affect defendants on the lower end of the socio-economic scale. This bill would require the court to declare a defendant’s car a nuisance under the circumstances where such a declaration is currently discretionary. In addition, this bill would expand the criteria under which the court must declare the car a nuisance. Mandatory punishments can be inconsistent with fairness because such punishments eliminate the flexibility to tailor consequences to match the facts of a particular case. Current law allows for judicial discretion to declare a vehicle nuisance, as specified, based on the facts before the court.
5) **Argument in Support:** According to the *Riverside Sheriffs' Association*, "AB 401 enhances penalties for those who have been convicted of multiple DUI offenses and would make the fifth DUI or a DUI committed within ten years of a previous felony DUI an automatic felony conviction.

"AB 401 would also expand vehicle impoundment terms, increasing the second and third DUI offense to longer time frames and would require the court to declare a car a nuisance, seize it, and destroy or sell it for specified repeated DUI convictions."

6) **Argument in Opposition:** According to the *California Public Defenders Association*, "AB 401 would increase DUI penalties in several different ways. First, while a fourth offense DUI is an alternative felony-misdemeanor, this bill would provide that a fifth offense within 10 years would be a ‘straight’ felony punishable by imprisonment of up to three years pursuant to P.C. 1170(h). Second, it would also make a single DUI within ten years of a prior felony DUI a ‘straight’ felony, instead of an alternative felony-misdemeanor, which is the current law. Third, AB 401 will result in more vehicles being impounded for a longer period of time. Fourth, AB 401 provides that a third DUI could trigger vehicle forfeiture.

"AB 401 would cost taxpayers more money because felonies are more expensive to prosecute. Felonies require preliminary hearings, and typically more court appearances than your ordinary misdemeanor. Felonies usually involve better trained and more experienced prosecutors and public defenders, who are consequently better paid, a cost ultimately borne by the taxpayer. The greater consequences of a felony mean that more of them proceed to trial, necessitating the expense of court personnel and jurors. If convicted, much more expensive incarceration will be the result, and our jails are already overcrowded.

"AB 401 is modeled on a failed policy paradigm of increasing penalties and mass incarceration. The current trend in correctional practice in this state is to emphasize non-custodial options rather than longer jail terms.

"AB 401 limits judicial discretion. While many individuals who acquire a fifth DUI or a first DUI within ten years of a prior felony DUI might very well receive a felony sentence, there is no compelling reason to remove from the sentencing judge the option of imposing a misdemeanor sentence in the appropriate case. The law does not have to be rigid, and impose a ‘one size fits all’ brand of justice. A wise judge may wish to also give a defendant a motive to ‘earn’ a misdemeanor by putting the individual on felony probation for a number of years with the object of avoiding the permanent mark of ‘ex-felon’ by scrupulously observing the terms of probation, including up to a year in jail if appropriate, and demonstrating that the individual is rehabilitated. Trusting our judges and preserving sentencing flexibility that can be shaped to the unique circumstances of each case benefits both society and the defendant.

"AB 401 would make vehicle forfeiture mandatory. Currently, judges have discretion to order vehicles driven during a DUI to be forfeited if the current offense is a vehicular manslaughter or a second offense within seven years of a prior felony DUI. This bill would expand the period from seven years to ten, and would add a third DUI, without any felony priors, as an additional triggering offense. Most importantly, this bill would remove the discretion that the sentencing judge currently enjoys to avoid forfeiting the vehicle if the interests of justice so dictate. Many of the same objections raised as to the third provision of this bill would be applicable here as well. While many vehicle will properly be forfeited, we
should not have a rigid system that cannot be responsive to the myriad variables of each case. We have many wise judges who should be trusted to impose justice firmly, but tempered with mercy when justice demands. Among other things, the judge should be able to consider how long ago the prior offenses were and whether there are any aggravating circumstances in the current case. The judge should also be able to consider any extraordinary and disproportionate hardships such forfeiture would impose on the defendant and their family.

"AB 401 is unnecessary, expensive, and rigid. For the law to be respected it must be flexible enough to respond to the needs of justice in each case, and that requires making it evenhanded and vesting our judges with discretion."

7) Related Legislation:

a) AB 974 (Cooley), would authorize a court to order participation in an enforced sobriety program as a condition of pretrial release for a person who has been charged with a driving under the influence offense within 10 years after a previous driving under the influence conviction.

b) AB 1713 (Burke), would make it a crime to drive a car with a blood alcohol concentration (BAC) of .05 or more, by lowering the current limit from .08 BAC.

8) Prior Legislation:

a) AB 2834 (Fong), Legislative Session of 2017-2018, would have specified that a conviction for DUI that was punished as a felony, constitutes a felony for the purpose of determining whether the person has been convicted of a separate violation or a prior violation, even if the judge exercised his or her discretion to subsequently reduce the offense to a misdemeanor. AB 2834 failed passage in the Assembly Public Safety Committee.

b) SB 67 (Bates), of the 2017-18 Legislative Session, would have a required a felony conviction for driving under the influence or driving under the influence causing injury, to remain a felony for purpose of determining whether the person has been convicted of a separate violation or a prior violation, even if the conviction was subsequently reduced to a misdemeanor. SB 67 was held in the Senate Appropriations Committee.

c) AB 2690 (Mullin) Chapter 590, Statutes of 2014, authorized enhanced penalties for a current conviction for driving under the influence or driving under the influence causing injury that occurs within 10 years of a separate conviction that was punished as a felony for driving under the influence, driving under the influence causing injury, or vehicular manslaughter with gross negligence.

d) AB 1601(Hill) Chapter 301, Statutes of 2010, permits a court to order a 10-year revocation of a driver’s license for a person convicted of three or more separate driving under the influence (DUI) offenses.
REGISTERED SUPPORT / OPPOSITION:

Support

California Peace Officers Association
California Police Chiefs Association
City of Manteca
Crime Victims United of California
Modesto Police Department
Ripon Police Department
Riverside Sheriffs' Association
San Joaquin County Sheriff
Stanislaus County Sheriff's Office

Oppose

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
San Francisco Public Defender's Office

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