Date of Hearing: March 26, 2019
Counsel: Matthew Fleming

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

AB 680 (Chu) – As Amended March 14, 2019

As Proposed to be Amended in Committee

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to adopt two mental health training courses for local public safety dispatchers, a basic training course of at least four hours, and a continuing education course of at least one hour.

EXISTING LAW:

1) Requires POST to adopt rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid. (Pen. Code, § 13510.)

2) Requires that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to the handling of persons with developmental disabilities or mental illness. (Pen. Code § 13519.2, subd. (a).)

3) Requires that the course of instruction relating to the handling of developmentally disabled or mentally ill persons be developed in consultation with appropriate groups and individuals having an interest and expertise in this area, and that it include information on the cause and nature of developmental disabilities and mental illness, as well as the community resources available to serve these persons. (Pen. Code § 13519.2, subd. (b).)

4) Requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with persons with mental disabilities. (Pen. Code, § 13515.25, subd. (a).)

5) Requires the POST continuing education course relating to law enforcement interaction with persons with mental disabilities to include all of the following:

   a) The cause and nature of mental illnesses and developmental disabilities;

   b) How to identify indicators of mental disability and how to respond appropriately in a variety of common situations;

   c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving a person with a mental disability;
d) Appropriate language usage when interacting with a person with a mental disability;

e) Alternatives to lethal force when interacting with potentially dangerous persons with mental disabilities;

f) Community and state resources available to serve persons with mental disabilities and how these resources can be best utilized by law enforcement to benefit the mentally disabled community; and,

g) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime. (Pen. Code, § 13515.25 subd. (b).)

6) Requires POST to establish and keep updated a classroom-based continuing training course that includes instructor-led active learning, such as scenario-based training, relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.27, subd. (a).)

7) Requires the instructor-led active learning course to be at least three consecutive hours, may include training scenarios and facilitated learning activities, shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

a) The cause and nature of mental illness, intellectual disability, and substance use disorders;

b) Indicators of mental illness, intellectual disability, and substance use disorders;

c) Appropriate responses to a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders;

d) Conflict resolution and deescalation techniques for potentially dangerous situations;

e) Appropriate language usage when interacting with potentially emotionally distressed persons;

f) Resources available to serve persons with mental illness or intellectual disability; and,

g) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.27, subd. (b).)

8) Requires POST to provide mental health training as part of its basic course for peace officers that address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

a) Recognizing indicators of mental illness, intellectual disability, and substance use disorders;
b) Conflict resolution and deescalation techniques for potentially dangerous situations;

c) Use of force options and alternatives;

d) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders; and,

e) Mental health resources available to the first responders to events that involve mentally disabled persons. (Pen. Code, § 13515.26, subds. (a) and (c).)

9) Requires the basic course of instruction for peace officers relating to persons with a mental illness, intellectual disability, or substance use disorder to be at least 15 hours, and include training scenarios and facilitated learning activities relating to law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.26, subd. (d).)

10) Requires POST to establish and keep updated a classroom-based continuing training course that includes instructor-led active learning, such as scenario-based training, relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.27, subd. (a).)

11) Requires the continuing training course relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders to be at least three consecutive hours, and states that it may include training scenarios and facilitated learning activities, shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

a) The cause and nature of mental illness, intellectual disability, and substance use disorders;

b) Indicators of mental illness, intellectual disability, and substance use disorders;

c) Appropriate responses to a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders;

d) Conflict resolution and deescalation techniques for potentially dangerous situations;

e) Appropriate language usage when interacting with potentially emotionally distressed persons;

f) Resources available to serve persons with mental illness or intellectual disability; and,

g) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders. Pen. Code, § 13515.27, subd. (b.).

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement**: According to the author, "AB 680 will provide dispatchers, who are often the first point of contact in a crisis, with valuable training to help identify a mental health crisis and inform law enforcement how to appropriately approach the situation on the ground. At least 20 percent of adults in jails and prisons have a recent history of mental illness and 70 percent of youth who are incarcerated have at least one mental health condition. We need to do better to connect people with the appropriate services. This bill will both better inform those on the ground and provide important health intervention procedure for the person in crisis."

2) **Public Safety Dispatcher Training**: A public safety dispatcher receives and dispatches emergency calls from the public. A dispatcher may work for local, state or federal government agencies, hospitals or independent emergency centers. The dispatcher is the first point of contact whose primary responsibility is to initiate the appropriate response.

The Public Safety Dispatchers' Basic Course is the entry-level training requirement for dispatchers employed by agencies participating in POST's public safety dispatcher program. The Public Safety Dispatchers' Basic Course has a minimum hourly requirement of 120 hours, which is divided into 14 individual topics, called Learning Domains. The Learning Domains contain the minimum required foundational information for given subjects, which are detailed in the publication entitled Training Specifications for the Public Safety Dispatchers' Basic Course. A copy of the publication is available on POST’s website. (http://lib.post.ca.gov/Publications/DispatcherTrainingSpecsOnlineformat.pdf)

The publication indicates that public safety dispatchers currently receive training in "Techniques to effectively communicate with a person who is … mentally incapacitated" (Id. at 104-2.), and also they receive training in dispatcher responsibilities and requirements of gathering "Information needed to assist initial response action," which includes "Mental, emotional, medical, or physical condition." (Id. at 105-2.)

3) **Implementation of this Bill**: This bill would require POST to adopt two mental health courses specific to public safety dispatchers. It would be additional to that training which is currently being provided to dispatchers. The first course would be part of the existing 120-hour basic public safety dispatcher training course and would need to be at least four hours. The second would be a continuing education course of at least one hour.

There is some reason to wonder whether a public safety dispatcher should spend time trying to ascertain whether a mental health issue is part of the reason for an emergency call, rather than simply relaying the information that is provided by the caller to the appropriate responder. Public safety dispatchers are not typically mental health professionals, and in many instances they are communicating with a person who is distressed and unfamiliar with the subject of the call. Assessing a mental health problem by telephone is likely to prove very challenging in such circumstances.

Nevertheless, there seems to be merit in providing training to public safety dispatchers in the
recognition of certain circumstances that may signal a mental health crisis as opposed to another kind of emergency, such as an armed person with specific, violent intentions. There have been a number of emergency-response situations in which a misunderstanding about mental illness has apparently led to an unnecessary loss of life. (See e.g., Fuchs, City of Long Beach Settles Lawsuit Filed by Family of Man Fatally Shot by Police, NBC News, April 6, 2018, available at: https://www.nbcnews.com/news/asian-america/city-long-beach-settles-lawsuit-filed-family-man-fatally-shot-n863341, [as of March 20, 2019].) According to materials provided by the author, the cities of Chicago, Illinois and Madison, Wisconsin have already begun to implement mental health training for the dispatchers in their jurisdictions.

Under existing law, peace officers receive a mental health training course of at least 15 hours during basic training and their continuing training course must be at least three hours. As originally drafted, this bill would have required mental health training for public safety dispatchers that meets the minimum requirements of the peace officer trainings. However, the duties performed by a peace officer are very different than those of a public safety dispatcher. Peace officers come face-to-face with the subject of an emergency call and require an entirely different set of skills and experience than the dispatchers who are the telephonic point of contact. Therefore, this committee is recommending amendments specifying that the mental health training for public safety dispatchers should cover the same topics as the peace officer training courses, but only to the extent that they are relevant to the duties of public safety dispatchers.

4) **Prior Legislation:** SB 11 (Beall), Chapter 468, Statutes of 2015 required POST to establish a 15-hour training course on law enforcement interaction with persons with mental illness as part of its basic training course; SB 11 also required POST to have a three hour continuing education course on the same subject matter.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California  
Bay Area Community Services  
Boldly Me  
California Attorneys For Criminal Justice  
California Hospital Association  
California Public Defenders Association  
City of Santa Clara  
Disability Rights California  
East Bay Legislative Coalition  
Los Angeles County Sheriffs's Department  
Mental Health Association of Alameda County  
National Alliance on Mental Illness-California  
Riverside Sheriffs' Association  
Santa Clara County Sheriff's Office  
Steinberg Institute  
The Arc and United Cerebral Palsy California Collaboration
Opposition

None

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

SECTION 1. Section 13510 of the Penal Code is amended to read:

13510. (a) (1) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff’s office, marshals or deputy marshals, peace officer members of a county coroner’s office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney’s office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

(2) The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff’s offices, marshals or deputy marshals, peace officer members of a county coroner’s office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney’s office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, and housing authority police departments.

(3) These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) (1) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, “primary responsibility” refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(2) The commission shall also adopt two mental health training courses for local public safety dispatchers, as described in paragraph (1), as follows:

(A) A basic training course that meets the minimum training requirements set forth covers the topics listed in Section 13515.26, subdivision (c), to the extent they are relevant to the duties of a public safety dispatcher. This course of instruction shall consist of a minimum of four hours.

(B) A continuing training course that meets the minimum training requirements set forth covers the topics listed in Section 13515.27, subdivision (b), to the extent they are relevant to the duties of a public safety dispatcher. This course shall consist of a minimum of one hour.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards that exceed the minimum standards established by the commission.
Date of Hearing: March 26, 2019
Chief Counsel: Gregory Pagan

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

AB 688 (Chu) – As Introduced February 15, 2019

SUMMARY: Recasts provisions of law that make it an infraction, punishable by a fine not to exceed $1,000, to leave an unsecured firearm in an unattended vehicle, as specified. Specifically, this bill:

1) Requires every person that leaves a firearm in an unattended vehicle, secure the firearm as follows:

   a) By locking the firearm in the vehicle’s trunk and securing the firearm to the vehicle’s frame using a steel cable lock or chain and padlock;

   b) By locking the firearm in a locked container that is fixed to the frame of the vehicle by a steel cable lock or chain and padlock in the trunk or elsewhere in the vehicle’s interior that is not in plain view;

   c) By locking the firearm in a locked container that is permanently affixed to the trunk or elsewhere in the vehicle that is not in plain view; and,

   d) By locking the firearm in a locked tool box or utility box.

2) Defines “padlock” to mean a locking device with a shackle portion that is at least five-thirty-seconds of an inch in diameter.

3) Defines “steel cable lock” to mean a braided steel cable that is at least three-eighths of an inch thick and either has a key or combination locking device that is made of high-quality steel.

EXISTING LAW:

1) Requires every person who is leaving a handgun in an unattended vehicle, lock the handgun in the vehicle’s trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle’s interior, and a violation of this provision is an infraction punishable by a fine not to exceed $1,000. (Pen. Code, § 25140, subds. (a) & (b).)

2) Defines "locked container" as "a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device." A locked container "does not include the utility or glove compartment of a motor vehicle." (Pen. Code, § 25140, subd. (d)(1)(A).)
3) Defines "locked tool box or utility box" to mean a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not contain a trunk, and is locked by a padlock, key lock, combination lock, or other similar locking device. (Pen. Code, § 25140, subd. (d)(1)(B))

4) Defines "trunk" as "the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger department. A trunk does not include the rear of a hatchback, station wagon, or sport utility vehicle, any compartment which has a window, or toolbox or utility box attached to the bed of a pickup truck." (Pen. Code, § 25140, subd. (d)(1)(D))

5) Defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks." (Pen. Code, § 25140, subd. (d)(1)(E).)

6) Provides that a vehicle is unattended when a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents. (Pen. Code, § 25140, subd. (d)(2).)

7) Defines "plain view", to include any "area of a vehicle that is visible by peering through the window of the vehicle, including windows that are tinted, with or without illumination." (Pen. Code, § 25140, subd. (d)(3).)

8) Exempts a peace officer from vehicle safe storage requirements during circumstances requiring immediate aid or action that are within the course of his or her official duties. (Pen. Code, § 25140, subd. (e).)

9) States that local ordinances pertaining to handgun storage in unattended cars supersede this section if the jurisdiction had enacted the ordinance before the effective date of this statute. (Pen. Code, § 25140, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, ""There are an alarming number of firearms stolen annually and those same firearms are often time used in illegal activities. By properly securing firearms while left unattended in vehicles, we would be protecting gun owners, law enforcement officers, and the larger community from potential criminal acts. AB 688 provides a practical solution that is not onerous on gun owners while protecting them from having their property falls into the wrong hands."

2) Argument in Support: According to the Alameda County District Attorney, "This bill would require firearms to be securely to the vehicle’s frame using a steel cable lock or chain permanently affixed to the vehicle.

"In research conducted by the Alameda County District Attorney's Office, we discovered that between 2012 and 2017, law enforcement agencies across the state reported to the California Department of Justice, Automated Firearms System (AFS) 83,695 firearms
stolen and 1,520 as lost. On average in California, there are over 229 firearms reported stolen and over four reported lost every day. In the same time period, law enforcement agencies in Alameda County reported an annual average of 399 stolen or lost firearms to CA DOJ. Based on this information, it is impossible to determine the exact number of firearms stolen from vehicles. This data demonstrates that proper storage of firearms must be a high priority for our Legislature.

"In a high profile case, the gun that was used to kill Kathryn Steinle in 2015 was stolen from the personal vehicle of a Ranger who had left his firearm holstered and unsecured in a backpack under the front seat of his vehicle. The firearm was not secured to the vehicle, it was only hidden from plain view.

"Current law only mandates the proper storage of just a ‘handgun’ in an unattended vehicle. This bill would include all firearms including rifles, shotguns or assault weapons which are common types of weapons that are used by both law enforcement and law abiding citizens. Current law also does not address that if the handgun is locked in a container out of view, the whole container can be stolen. Current law also states that the handgun can be locked in the trunk but most trunks are easily accessible through the passenger compartment. This bill would additionally require the firearm to be secured to the vehicle's frame using a steel cable lock or chain that is permanently affixed to the vehicle."

3) **Argument in Opposition:** According to the National Rifle Association, “California law has a variety of requirements regarding the criminal storage of firearms. AB 688 places overly burdensome and in some cases unattainable storage options that are neither practical nor possible for the average firearm owner who may temporarily leave their vehicle unattended on their way into the field or to the range.

“There are several references to securing either the firearm or container to the vehicle’s ‘frame’ through various methods. This is problematic with today’s cars, as the industry by and large has moved to ‘unibody’ construction resulting in vehicles without a frame in the traditional sense. In other instances, the ‘frame’ is not readily accessible, or securing in such a manner could be cost prohibitive.

“A more vexing issue involves common carriers. Unless exemptions are crafted for the United States Postal Service, FedEx, UPS and other carriers, imagining what would be required for them to be in full compliance strains the mind. Perhaps it is too complex an issue. Two possible ‘solutions’ could be that the authorities could just ‘turn a blind eye to the problem or craft a preposterous rationale for enforcement inaction. Further, under AB 688, if a criminal were to break into this person’s vehicle and steal the individual’s firearm, and it comes to the attention of the police that this person’s firearm was not secured according to AB 688, the burglary victim could be criminally prosecuted and lose their firearms rights. This legislation punishes the victims of property crime.

“While the intent of this legislation to help reduce the criminal misuse of firearms is admirable, this is not the solution. AB 688 would be another costly burden on law-abiding citizens that could subject them to criminal penalties as the victims of property crimes.”
4) Prior Legislation:

   a) SB 1382 (Vidak), Chapter 94, Statutes of 2018, permitted the leaving of a handgun in an unattended vehicle if the handgun is locked in a tool box or utility box, and defines a locked tool box or utility box as a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not have a trunk, and is locked by a padlock, key lock, combination lock, or other similar locking device.

   b) SB 497 (Portantino), Chapter 809, Statutes of 2017, allowed a peace officer when leaving a handgun in an unattended vehicle to lock the handgun in the center console, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Sponsor)
Bay Area Student Activists
County of Santa Clara
County of Santa Clara, District Attorney

Oppose

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

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Requires specified medical treatment and services for county jail and state prison inmates who are pregnant, and requires that incarcerated persons be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request. Specifically, this bill:

1) Requires an inmate identified as “possibly pregnant” during an intake health exam be scheduled for lab work to verify pregnancy within three business days of arrival at the jail or prison.

2) States that if an inmate is confirmed to be pregnant, then an obstetrics examination must be scheduled within seven days of arrival at the jail or prison.

3) Requires the obstetrics exam to include the following: a determination of the term of pregnancy; a plan of care; and, an order for any diagnostic studies needed.

4) Provides a specified schedule for prenatal care visits.

5) Mandates that pregnant inmates have access to all of the following: daily prenatal vitamins; childbirth education and parenting options; newborn care, as specified; lactation education and support; and access to doula support.

6) Requires that a pregnant inmate incarcerated in a multi-tier housing unit be assigned to a lower bunk and lower tier housing.

7) Requires that pregnant inmates using heroin or on a methadone treatment be enrolled in a methadone maintenance program.

8) States that eligible pregnant inmates are to be given notice of community-based programs serving pregnant, birthing, or lactating inmates.

9) Entitles every pregnant inmate to a referral to a medical social worker who shall do all of the following:

a) Discuss options for placement and care of the child after delivery;

b) Assist with phone access to contact relatives for purposes of placement of the newborn; and,
c) Oversee the placement of the newborn.

10) States that a pregnant inmate in labor should be treated as an emergency, taken to a hospital for purposes of giving birth, and shall be transported in the least restrictive way possible.

11) Allows a pregnant inmate to have a support person present during childbirth, as specified.

12) Requires that all pregnant and postpartum inmates receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly-diagnosed chronic conditions, including infectious diseases.

13) Prohibits shackling of pregnant inmates who are hospitalized for prolonged periods of time or who are experiencing regular contractions, as specified.

14) Requires postpartum examinations by a medical provider at specified time intervals once the inmate is back in jail or prison.

15) Prohibits solitary confinement of pregnant inmates.

16) Requires that incarcerated persons be provided materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

EXISTING LAW:

1) Requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities. BSCC shall review those standards biennially and make any appropriate revisions. The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and, personnel training. The standards include specific ones for pregnant inmates at the California Department of Corrections and Rehabilitation (CDCR) and in local adult and juvenile facilities. (Penal Code § 6030.)

2) Requires every woman being committed to a CDCR institution to be examined mentally and physically and be given the care, training, and treatment adapted to her particular condition. (Pen. Code, § 3403.)

3) Requires that a state prison inmate desiring an abortion be permitted to determine eligibility for abortion under the law, and if eligible, be permitted to obtain an abortion. (Pen. Code, § 3405.)

4) Entitles a female inmate in prison to receive medical services to determine if she is pregnant, and if found to be pregnant, entitles the inmate to a determination of the extent of medical services needed and to the receipt of those services from the physician and surgeon of her choice. (Pen. Code, § 3406.)

5) Prohibits the use of restraints on pregnant or recovering inmates as specified. (Pen. Code, § 3407.)
6) Requires the CDCR to establish a community treatment program under which women inmates sentenced to state prison who have one or more children under age six to participate. The program shall provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

7) Provides that every female inmate who is pregnant and who is not eligible for participation in the community treatment program shall have access to complete prenatal care. (Pen. Code, § 3424.)

8) Requires the CDCR to establish minimum standards for pregnant inmates not placed in the community treatment program, including:

a) A balanced, nutritious diet approved by a doctor;

b) Prenatal and postpartum information and health care;

c) Information pertaining to childbirth education and infant care; and,

d) A dental cleaning. (Pen. Code, § 3424.)

9) Requires a county sheriff or the administrator of the county jail to develop and implement, by January 1, 2020, an infant and toddler breast milk feeding policy for lactating inmates detained in county jails. (Pen. Code, § 4002.5.)

10) Authorizes a sheriff, chief or director of corrections, or chief of police to charge a fee of $3 for any inmate-initiated medical visit, but prohibits the denial of medical care if the inmate does not have the money in his or her personal account. (Pen. Code, § 4011.2.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author’s Statement:** According to the author, “Our criminal justice system does not sufficiently consider or address the particular circumstances of pregnant people. A review of policies and practices of California’s county jails revealed that pregnant inmates do not receive adequate care during and after pregnancy. While institutions of incarceration should be meeting all the health needs of people behind bars, reproductive and health care needs are often unique and time-sensitive. This bill would help ensure that county jails and state prisons have dignified reproductive healthcare conditions for pregnant inmates before, during, and after birth. AB 732 would require county jails and state prisons to ensure pregnant inmates are scheduled for prenatal visits, referred to social services, given access to community based programs, and provided with postpartum examinations. This bill would also prohibit the shackling, restraining, and solitary confinement of pregnant inmates.”

2) **Report on Reproductive Health Behind Bars in California:** In 2016, the American Civil Liberties Union (ACLU) of California released a report titled *Reproductive Health Behind Bars in California.* (https://www.aclusocal.org/sites/default/files/wp-content/uploads/2016/01/Reproductive-Health-Behind-Bars-in-California.pdf) One of the
recommendations of the report was to extend the current protections that pregnant inmates incarcerated in state prison receive to pregnant inmates in county jails. The report stated, “Currently, protections that address obstetric care, housing accommodations, and the presence of a support person during labor and delivery, among other issues, are confined to a section of the California Code of Regulations that applies to prisons but not jails. An alignment of policies would ensure pregnant people throughout California’s criminal justice system are treated equitably.” (Ibid. at p. 28.)

This bill establishes specific standards for pregnant inmates in county jails and expands on those currently in place for prison inmates, consistent with many of the recommendations of the ACLU report.

One issue that that was raised in the ACLU report that this bill does not address was forced pregnancy testing. The report noted that, “Mandatory pregnancy testing violates privacy rights and intrudes into one of the most private areas of people’s lives—reproductive decision making.” (Reproductive Health Behind Bars in California, supra, p. 6.) Should this bill be amended to allow inmates to opt out of pregnancy testing, if they so choose?

Additionally, should this bill be amended to permit a pregnant, county-jail inmate to obtain an abortion when otherwise permitted under state law, as pregnant prison inmates are allowed to obtain? (See Pen. Code, §3405.)

3) **Argument in Support:** According to the University of California Berkeley Law School’s Center on Reproductive Rights and Justice, “Establishing regulations that protect the reproductive health care, support, and experiences of incarcerated people is essential for their health and well-being, particularly those with the potential to reproduce, or who are pregnant at time of entry into the carceral system. Women of color and LGBTQ people are disproportionately incarcerated and would be primarily impacted by AB 732. Pregnant and parenting people are one of the most marginalized and stigmatized groups whose complex pathway to the carceral system is usually embedded in sex and gender-based violence and substance use and addiction. Rather than provide critical support, California has responded to the needs of the community with legislation that criminalizes, stigmatizes, and harms pregnant, birthing, and parenting people that need the most holistic and compassionate care.

“The lack of standardization of social and clinical care, support, and accommodations in state prisons and county jails adversely impacts pregnancy and childbirth outcomes as well as the health and well-being of both parent and infant. It also increases the numbers of preventable pregnancy and childbirth related deaths, severe complications, and unnecessary interventions including cesarean births. Loose interpretation of the existing language and guidelines has proven to be a threat to incarcerated people’s reproductive health, rights, experiences, and outcomes.

“Incarceration obligates the government to uphold the dignity and humanity of incarcerated people in the provision of health care, services, and supports, throughout any aspect of their reproductive experiences. AB 732 requires the implementation of a state-mandated reproductive health program with accountability mechanisms to assure dignified reproductive health care conditions, experiences, and outcomes.”
4) **Argument in Opposition:** According to the *California State Sheriffs' Association*, "AB 732, ...would mandate, without funding, specific, inflexible, and costly prenatal and postpartum care for pregnant county jail inmates.

"Existing state regulation requires the health authority of a correctional facility to set forth in writing policies and procedures in conformance with applicable state and federal law, which are reviewed and updated at least every two years, on a number of topics including provision for screening and care of pregnant and lactating women, including prenatal and postpartum information and health care, including but not limited to access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education, and infant care.

"We believe it is inappropriate to set such rigorous treatment schedules and specifications for care in statute as it limits necessary flexibility. Additionally, the vast unfunded mandates contemplated by this bill related to specific courses of prenatal and postpartum care without regard to local standards or resources will be extremely costly, especially to small counties. Not every county will be able to provide this level of care without extreme budgetary pressure or challenges related to identifying specific items or course of care in 58 diverse counties.”

5) **Related Legislation:** AB 45 (Stone) repeals the authority of the CDCR, any local sheriff, chief or director of corrections, or chief of police to charge a fee for any inmate-initiated medical visit. AB 45 is pending in the Assembly Appropriations Committee.

6) **Prior Legislation:**

a) AB 2507 (Jones-Sawyer), Chapter 944, Statutes of 2018, requires the sheriff or administrator of a county jail to develop and implement an infant and toddler breast milk feeding policy for lactating inmates detained in county jails.

b) AB 2530 (Atkins), Chapter 726, Statutes of 2012, updated provisions prohibiting shackling of pregnant inmates.

c) AB 568 (Skinner), of the 2011-2012 Legislative Session, would have required that pregnant inmates and wards not be shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for safety, and if necessary, be restrained in the least restrictive way possible. AB 568 was vetoed.

d) AB 478 (Lieber), Chapter 608, Statutes of 2005, set minimum standards for the medical care of inmates who are pregnant during their incarceration.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Access Women's Health Justice  
American Civil Liberties Union of California  
Black Women for Wellness Action Project  
BreastfeedLA
California Attorneys for Criminal Justice
California Catholic Conference
California Nurse Midwives Association (CNMA)
California Public Defenders Association
Center on Reproductive Rights and Justice
Ella Baker Center for Human Rights
If/When/How: Lawyering for Reproductive Justice
Initiate Justice
Khmer Girls in Action
NARAL Pro-Choice California
National Council of Jewish Women Los Angeles
Positive Women's Network-USA
Women's Foundation of California, Women's Policy Institute

Oppose

California State Sheriffs' Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: March 26, 2019
Counsel: Nikki Moore

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

AB 803 (Gipson) – As Introduced February 20, 2019

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to establish a Peer Support Labor Management (PSLM) Committee tasked with crafting and updating a standardized statewide policy for CDCR's peer support program. Specifically, this bill:

1) Requires the PSLM committee be established, be composed of an equal number of representatives of the employer and the employees, and hold their first meeting on or before July 1, 2020.

2) Requires a statewide policy to address, among other things, the selection process and training for peer support team members, and guidelines for the types of communication that would remain confidential within the peer support program.

3) Requires CDCR to submit an annual report to the Legislature that contains data pertaining to the utilization rates of the peer support program statewide.

EXISTING CDCR REGULATION:

1) Establishes a Peer Support Program (PSP) as a resource for employees involved in violent, work related situations that may cause serious physical or emotional trauma to the employee. Provides for immediate intervention and counseling to alleviate trauma-related problems and to help an employee remain fully productive. (Department Operations Manual, § 31040.3.2.)

2) Requires the PSP to provide a) specific intervention services and resources, b) professional non-departmental counseling services in a timely manner that meets the employee's needs, and c) assistance through PSP team members and, if needed, facilitation of referrals for counseling by non-departmental licensed mental health professionals who are Psychological First Aid trained for the following situations: physical assault, sexual assault, a hostage incident, an incident causing serious injury/death to person, and direct involvement in critical incidents. (Department Operations Manual, § 31040.3.2.)

3) Establishes that PSP Team Leaders shall be designated as specified; states that each PSP team shall be comprised of ten or more staff with appropriate interest and skills; establishes that the headquarters' team shall include staff from each headquarters' location; and requires the PSP team shall have both male and female members. (Department Operations Manual, §§ 31040.3.2.5 to 31040.3.2.6.)

4) Establishes that a facility manager shall ensure that a local PSP program is available and used in the employee's and facility's best interests. (Department Operations Manual, §
5) Requires a departmental coordinator to execute a master contract to provide non-departmental licensed mental health professionals who are trained to debrief and assist staff following an incident, if necessary. Requires a departmental coordinator to provide training to PSP team leaders; assist area PSP Team Leaders, committees, and management in the solution of trauma-related problems; ensure strict confidentiality of the employee’s personal information; collect statistics and other pertinent data to monitor program effectiveness; and prepare an annual report summarizing the progress and effectiveness of the program. (Department Operations Manual, § 31040.3.2.8.)

6) Sets forth responsibilities for a supervisor and a PSP team leader in responding to an incident, as specified, and includes requirements to debrief following an incident. (Department Operations Manual, §§ 31040.3.2.9 and 31040.3.2.10.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “California’s correctional officers experience a variety of mental and physical traumas everyday as a result of their careers. Work-related experiences can result in post-traumatic stress injuries, as well as lead to unhealthy or dangerous outcomes, including substance abuse and other addictions, or tragically, even suicide. Having support from peers and individuals who understand exactly what they experience can be lifesaving. However under current law there is no requirement that the California Department of Corrections and Rehabilitation develop standardized policies and procedures for peer support. AB 803 is necessary so that correctional officers receive the crucial behavioral health assistance.”

2) Existing Peer Support Programs at CDCR: CDCR reports that it has over 1,200 peer supporters statewide.\(^1\) According to CDCR, the current Peer Support Program (PSP) was established to ensure CDCR staff involved in work-related critical incidents are provided with intervention and available resources to cope with the immediate effects of a traumatic incident.\(^2\) The PSP “provides peers who are trained to listen and offer emotional and practical support to help an employee deal with his/her situation in a confidential environment.”\(^3\) The PSP exists to provide employees immediate counseling and related services when they are involved in specific violent, work related situations that may cause serious physical and emotional trauma. The purpose is to help “alleviate many trauma-related problems” and assist an employee in remaining “fully productive.” (CDCR Department Operations Manual (DOM) Section 31040.3.2.) To accomplish this goal, the currently established PSP is tasked with providing specific intervention services and resources and facilitating referrals for counseling to non-departmental licensed mental health professionals. The program is operated by a facility in conjunction with the Office of Employee Wellness (OEW), which provides PSP training, lesson plans, and curriculum. OEW coordinates with

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\(^1\) https://www.cdcr.ca.gov/Wellness/psp.html

\(^2\) Id.

\(^3\) Id.
the Office of Training and Professional Development to ensure that all employees receive information annually at the local level about the program.

The Department Operations Manual (DOM) specifies how the current PSP is structured and shall operate. (DOM Section 31040.3.2.) The DOM states that every CDCR facility administrator shall ensure that a local PSP program is available and used in the employee’s and Department’s best interests, and the administrator is tasked with appointing all members of the PSP team and ensuring that they receive appropriate training. The PSP must include 10 or more staff, which is called a “team” and shall be comprised of both male and female staff who have “appropriate interest and skills.” This bill would mandate that any PSLM team include an equal mix of management and non-management employees.

The DOM requires that a departmental PSP coordinator collect statistics and other pertinent data to monitor program effectiveness, and prepare an annual report summarizing the progress and effectiveness of the program. This bill would mandate similar reporting requirements statewide, and would require that information be provided to the Legislature annually.

3) **Current Utilization of PSPs:** The Officer Health and Wellness: Results from the California Correctional Officer Survey is a report based on a survey conducted from March to May 2017 of a sample of 8,334 correctional officers and sworn staff. The survey is a “large-scale effort to gather individual-level information on the thoughts, attitudes, and experiences of criminal justice personnel.” When questioned about the utilization of CDCR’s wellness resources, only **three percent** of responding employees reported utilizing PSPs. The report on the survey provides insight into the minimal use of PSPs: “The concerns officers raise about using the [Employee Assistant Program] help to explain these relatively low participation rates. Only 11% of officers say they do not need these resources, and only 7% say they do not believe that [Employee Assistant Program] would help…. In contrast, fully one-fifth of correctional officers express concern about confidentiality. Another 15% are concerned about the potential for negative consequences from management if they make use of these services. Specifically, 11% fear it would cause them to lose their job and 8% that it would result in loss of their [Concealed Weapons Permit]. Relatedly, 13% of officers say they worry about negative judgment from coworkers.”

4) **Confidentiality of Records or Communications Exchanged in PSP-Related Interactions:** The DOM specifies that the departmental coordinator should “ensure strict confidentiality of the employee’s personal information” under any operating PSP. This bill instructs CDCR to establish statewide standards for confidentiality between a person seeking PSP services and any person providing assistance through the PSP program. While a CDCR policy, whether it is developed for a local facility or statewide, can establish guidelines for confidentiality, there is no guarantee that information deemed confidential through the policy would remain confidential in a court proceeding or through the California Public Records Act.⁴

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⁴ Existing law generally provides that no person has a privilege to refuse to be a witness, or refuse to disclose any matter, or to refuse to produce any writing, object, or other thing. (Evid. Code, § 911.). Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6250 et seq.)
5) **Governor's Veto Message:** Last year, AB 1116 (Grayson), of the 2017-2018 Legislative Session, would have enacted the Peer Support and Crisis Referral Services Pilot Program to provide peer support and crisis referral services for correctional peace officers, parole officers, and firefighters. AB 1116 also proposed a new evidentiary privilege to prevent the disclosure of information exchanged between an officer and a peer support team member. In vetoing AB 1116, the Governor wrote: “I appreciate the author's sincere attempt to address the occupational stress experienced by some of our bravest public servants. However, I believe that the scope of confidentiality afforded under this bill is too broad and fails to strike the right balance between fostering collegial trust and concealing information necessary to ensure safe and healthy workplaces. Further, peer support programs are already in place for many public safety personnel, making this narrow pilot program largely duplicative and potentially in conflict with existing programs. I would recommend that instead of new statutory provisions, the sponsors and author work with the affected agencies to improve existing programs.”

6) **Argument in Support:** According to the bill’s Co-Sponsor, the *California Correctional Peace Officer Association*, “Preliminary data clearly shows that the correctional environment can negatively impact officers’ mental and physical health. Many of our officers are suffering in silence from post-traumatic stress injuries associated with their work-related experiences. As such, CCPOA and the CCPOA Benefit Trust Fund are leading an effort to develop programs and policies that can help mitigate the inherent stressors of correctional work.

“We have found that peer support can be an effective means of getting help to officers in need, from other officers who can relate to their experiences. However, a trusted program is paramount to connecting correctional officers with treatment without the fear of stigma or retribution. Having employee representatives at the table to help craft the peer support program policies as proposed by AB 803 is necessary to enable and encourage our members to seek out and receive crucial behavioral health assistance when they need it.

“Equipping officers with the tools and resources they need to stay mentally and physically healthy will ensure that we continue to serve them and their families, and ultimately will contribute to improving the overall operation of our correctional institutions.”

7) **Related Legislation:**

a) AB 1116 (Grayson) Establish a Peer Support Program for California’s firefighters. AB 1116 is currently pending before the Assembly Health Committee.

b) AB 1117 (Grayson) Establishes the Peace Officer Peer Support and Crisis Referral Services Pilot Program. AB 1117 is referred to the Assembly Rules Committee.

8) **Prior Legislation:** AB 1116 (Grayson), of the 2017-2018 Legislative Session, would have enacted the Peer Support and Crisis Referral Services Pilot Program to provide peer support and crisis referral services for California's correctional peace officers, parole officers, and firefighters. AB 1116 would have also created a new evidentiary privilege to prevent the disclosure of information exchanged between an emergency service personnel and a peer support team member. AB 1116 was vetoed by the Governor.
REGISTERED SUPPORT / OPPOSITION:

Support

California Correctional Peace Officers Association (CCPOA)
California Correctional Peace Officers Association Benefit Trust Fund
The Steinberg Institute

Opposition

None

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

AB 837 (Holden) – As Amended March 21, 2019

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to establish guidelines for the frequency of periodic training in the investigation of hate crimes, as specified.

EXISTING LAW:

1) Requires POST to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

2) States that the POST hate crimes course of instruction shall make the maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:
   
a) Indicators of hate crime;

b) The impact of these crimes on the victim, the victim’s family and the community, and the assistance and compensation available to the victims;

c) Knowledge of laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;

d) Law enforcement procedures, reporting, and documentation of hate crimes;

e) Techniques and methods to handle incidents of hate crimes in a non-combative manner;

f) Multi-mission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes in whole or in part because of the victim’s actual or perceived homelessness;

g) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab, and anti-Islamic crimes, and techniques and methods to handle these special problems; and,

h) Preparation for, and response to future anti-Arab/middle Eastern and anti-Islamic hate crime waves that the Attorney General determines is likely. (Pen. Code, § 13519.6, subd,
3) Provides that the guidelines developed by POST shall incorporate certain procedures and techniques, as specified, and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

a) A message from the law enforcement agency’s chief executive officer to the agency’s officers and staff concerning the importance of hate crime laws and the agency’s commitment to enforcement;

b) The definition of “hate crime”, as specified;

c) References to hate crime statutes as specified; and

d) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

i) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.

ii) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.

iii) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.

iv) Providing victim assistance and follow-up, including community follow-up.

v) Reporting. (Pen. Code § 13519.6, subd. (c).)

4) 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).)

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

6) 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).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement:** According to the author, "California prides itself on being a progressive powerhouse, yet a state audit of four law enforcement agencies revealed that 14% of hate crimes in the state were misreported. To have an accurate representation of how many hate crimes occur within California, it is necessary to guarantee that local law enforcement agencies have the tools necessary to accurately identify and report hate crimes and hate incidents. Considering that the Commission on Peace Officer Standards and Training (POST) provides training materials to POST-certified law enforcement agencies for free, a refresher training based on these materials will create a statewide standard and will facilitate the data collection on hate crimes across the state."

2) **POST Training Requirements:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).)

According to the POST Web site, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, Regular Basic Course Training Specifications; <http://post.ca.gov/regular-basic-course-training-specifications.aspx>.] These topics are taught during a minimum of 664 hours of training. [POST, Regular Basic Course, Course Formats, available at: [<http://post.ca.gov/regular-basic-course.aspx>.] Over the course of the training, individuals are trained not only on policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes. This requires knowledge of the California Penal code specifically.

3) **Need for Revision of Hate Crime Policy:** According to data from the National Crime Victim Survey by the U.S. Justice Department, hate crimes are significantly underreported. This survey, in comparison to numbers reported to the FBI, suggests that hate crimes likely occur 24-28 times more than they are reported. This underreporting is due in part to a lack of formal training and reporting requirements for local police departments as well as the victim’s fear of insensitive treatment by law enforcement. 

4) **Hate Crime Reporting in California:** 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. That being said, hate crime events in California have been 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.
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.” Even with the two-tiered system in place, the DOJ still lists the policies of law enforcement agencies as one of four factors possibly influencing the volume of hate crimes reported. (<https://openjustice.doj.ca.gov/resources/publications> [Feb. 9, 2018].)

Areas having the greatest concentrations of hate groups—Sacramento, San Francisco Bay, and Los Angeles—the only policy language covering procedures for hate crimes that this Committee was able to locate online, was a General Order (524.04) posted by the Sacramento Police Department (SPD). The General Order details the department’s protocol for identifying and dealing with bias motivated crimes. It also, among other things, defines what a bias motivated crime is, clarifies that a determination of whether the crime was bias motivated need not be made at the scene, orders officers to not argue with the victim if the victim is of the belief that the crime was bias motivated, gives a list of factors to include when assessing possible motivations, requires officers to notify a field supervisor if they believe the crime was bias motivated, and it orders that the station commander be informed before the follow-up investigation is delegated to the Felony Assaults Unit in accordance with the DOJ’s two-tiered analysis mandate. (<https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO-52404-Bias-Motivated-Crimes.pdf?la=en> [Feb. 9, 2018].)

The Los Angeles Police Department (LAPD) website posted its manual (Volume 1, Section 522), which states its general policy, but does not discuss specific procedures. Among other things, it states, “When any act motivated by hatred or prejudice occurs, the Department will ensure that it is dealt with on a priority basis and use every necessary legal resource to rapidly and decisively identify the suspects and bring them to justice.” (<http://www.lapdonline.org/lapd_manual/volume_1.htm#522> [Feb. 9, 2018].)

5) Prior Legislation:

a) AB 1985 (Ting), Chapter 26, Statutes of 2018, required local law enforcement agencies to include specified requirements and definitions into a hate crimes policy manual if they decide to adopt or update a hate crimes policy manual.

b) AB 158 (Chu), of the 2017-18 Legislative Session, required POST to develop, on or before January 1, 2019, statewide hate crime reporting guidelines to be implemented by all law enforcement agencies. AB 158 was held on the Assembly Appropriations Committee suspense file.
REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Humane Immigrant Rights
National Association of Social Workers, California Chapter
The Arc and United Cerebral Palsy California Collaboration

Oppose

Peace Officers Research Association of California

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
Date of Hearing: March 26, 2019
Counsel: Matthew Fleming

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

AB 893 (Gloria) – As Introduced February 20, 2019

SUMMARY: Prohibits, as of January 1, 2021, the sale of firearms and ammunitions at the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar and thereby creates a misdemeanor offense for a violation of that prohibition. Specifically, this bill:

1) Prohibits any officer, employee, operator, or lessee of the 22nd District Agricultural Association, as defined, from authorizing, or allowing the sale of any firearm or ammunition on the property or in the buildings that comprise the Del Mar Fairgrounds in the County of San Diego and the City of Del Mar or any successor or additional property owned, leased, or otherwise occupied or operated by the district.

2) Provides that the term “ammunition” includes assembled ammunition for use in a firearm and components of ammunition, including smokeless and black powder, and any projectile capable of being fired from a firearm with deadly consequence.

3) Provides that the prohibition on firearms and ammunitions sales at the Del Mar Fairgrounds does not apply to gun buy-back events held by a law enforcement agency.

4) States that this section will become operative on January 1, 2021.

EXISTING LAW:

1) Divides the state in agricultural districts and designates District 22 as San Diego County. (Food and Agr., §§ 3851, 3873.)

2) Allows for the establishment of District Agricultural Associations within each agricultural district, for the purposes of holding fairs, expositions and exhibitions, and constructing, maintaining, and operating recreational and cultural facilities of general public interest. (Food & Agr. Code, § 3951.)

3) Provides that bringing or possessing a firearm within any state or local public building is punishable by imprisonment in a county jail for not more than one year, or in the state prison, unless a person brings any weapon that may be lawfully transferred into a gun show for the purpose of sale or trade. (Pen. Code §§ 171b subd. (a), 171b subd. (b)(7)(A).)

4) Prohibits the sale, lease, or transfer of firearms without a license, unless the sale, lease, or transfer is pursuant to operation of law or a court order, made by a person who obtains the firearm by intestate succession or bequest, or is an infrequent sale, transfer, or transfer, as defined. (Pen. Code § 26500, 26505, 26520.)
5) Excludes persons with a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice from the prohibitions on the sale, lease, or transfer of used firearms, other than handguns, at gun shows or events. (Pen. Code § 26525.)

6) Permits licensed dealers to sell firearms only from their licensed premises and at gun shows. (Pen. Code § 26805.)

7) States that a dealer operating at a gun show must comply with all applicable laws, including California’s waiting period law, laws governing the transfer of firearms by dealers, and all local ordinances, regulations, and fees. (Pen. Code § 26805.)

8) States that no person shall produce, promote, sponsor, operate, or otherwise organize a gun show, unless that person possesses a valid certificate of eligibility from the Department of Justice. (Pen. Code § 27200.)

9) Specifies the requirements that gun show operators must comply with at gun shows, including entering into a written contract with each gun show vendor selling firearms at the show, ensuring that liability insurance is in effect for the duration of a gun show, posting visible signs pertaining to gun show laws at the entrances of the event, and submitting a list of all prospective vendors and designated firearms transfer agents who are licensed firearms dealers to the Department of Justice, as specified. (Pen. Code §§ 27200, 27245.)

10) Specifies that unless a different penalty is expressly provided, a violation of any provision of the Food and Agricultural code is a misdemeanor. (Food and Agr. Code, § 9.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “There is an ever apparent link between the gun violence we see virtually every week and the number of guns in our communities. Additionally, the State of California should not be profiting or benefitting from the sale of firearms. This bill demonstrates that we value people over guns and public safety above all.

   “Fundamentally, I believe it is wrong for the State of California to profit or to benefit from the sale of firearms and ammunition. I acknowledge that gun ownership is a Constitutional right in the United States, and I know that there are plenty of responsible gun owners out there. However, the fact remains that widespread accessibility to these deadly weapons produces a public safety threat that we must address.”

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

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

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

3) **Gun Show Regulations in California:** In 1999, California enacted the nation’s broadest legislation to increase oversight at gun shows. AB 295 (Corbett), Chapter 247, Statutes of 1999, the Gun Show Enforcement and Security Act of 2000, added a plethora of requirements for gun shows. To obtain a certificate of eligibility from the DOJ, a promoter must certify that he or she is familiar with existing law regarding gun shows; obtain at least $1,000,000 of liability insurance; provide an annual list of gun shows the applicant plans to promote; pay an annual fee; make available to local law enforcement a complete list of all entities that have rented any space at the show; submit not later than 15 days before the start of the show an event and security plan; submit a list to DOJ of prospective vendors and designated firearms transfer agents who are licensed dealers; provide photo identification of each vendor and vendor’s employee; prepare an annual event and security plan; and require all firearms carried onto the premises of a show to be checked, cleared of ammunition, secured in a way that they cannot be operated, and have an identification tag or sticker attached. AB 295 also provided for a number of penalties for a gun show producer’s willful failure to comply with the specified requirements.

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

California’s strict gun show regulations may help to prevent increases in firearm deaths and injuries following gun shows. (See Ellicott C. Matthay, et al., “In-State and Interstate Associations Between Gun Shows and Firearm Deaths and Injuries,” Annals of Internal Medicine (2017) Vol. 1 Iss. 8.)
4) **Current State of Gun Shows at the Del Mar Fairgrounds:** According to a Fairgrounds press release, last year the 22nd District Agricultural Association’s Board of Directors voted 8 to 1 to not consider any contracts with producers of gun shows beyond Dec. 31, 2018, until it has adopted a more thorough policy regarding the conduct of gun shows. (Available at: http://www.delmarfairgrounds.com/index.php?fuseaction=about.press_details&newsid=1396 [as of March 20, 2019].) The policy is to be presented to the Board no later than December, 2019 and would:

- Consider the feasibility of conducting gun shows for only educational and safety training purposes and bans the possession of guns and ammunition on state property,
- Align gun show contract language with recent changes in state and federal law
- Detail an enhanced security plan for the conduct of future shows
- Propose a safety plan
- Consider the age appropriateness of such an event
- Grant rights for the DAA to perform an audit to ensure full compliance with California Penal Code Sections 171b and 12071.1 and 12071.4. These audit rights may be delegated at the discretion of the 22nd DAA. (*Id.*)

According to local reporting, the operator of the Del Mar Fairgrounds gun show has filed a lawsuit challenging the Board of Directors’ decision on the grounds that it violates the U.S. Constitution’s First Amendment guarantee to free expression. (Williams, *Lawsuit to hang up Del Mar Fairgrounds gun show policy recommendations*, Del Mar Times, March 15, 2019, available at: https://www.delmartimes.net/news/sd-cm-nc-gun-show-20190315.htmlstory.html. [as of March 20, 2019].)

This bill would add a section to the Food and Agricultural Code that prohibits the sale of firearms and ammunition at the Del Mar Fairgrounds. By default, a violation of any provision of the Food and Agricultural code is a misdemeanor, unless otherwise specified. Therefore, this bill would effectively terminate the possibility for future gun shows at the Del Mar Fairgrounds.

5) **Veto Messages on Previous Attempts to Ban Gun Shows in Agricultural Districts:**

There have been several legislative attempts to regulate gun shows in Agricultural District 1A in San Mateo and San Francisco Counties at a location commonly known as the “Cow Palace.” The Cow Palace is substantially similar to the Del Mar Fairgrounds inasmuch as it is a state-owned property located within the jurisdiction of a county. SB 221 (Wiener), of 2018, SB 475 (Leno) of 2013, SB 585 (Leno) of 2009, and others, all attempted to either ban gun shows at the Cow Palace altogether, or require prior approval from the county Board Supervisors prior to entering into a contract for holding a gun show there. All three attempts were vetoed by the Governor.

In regards to SB 221, Governor Brown stated: “This bill would prohibit the sale of firearms and ammunition at the District Agricultural Association 1A, commonly known as the Cow
Palace. This bill has been vetoed twice over the last ten years, once by myself, and once by Governor Schwarzenegger. The decision on what kind of shows occur at the Cow Palace rests with the local board of directors which, incidentally, represents a broad cross section of the community. They are in the best position to make these decisions.”

SB 475 was also vetoed by Governor Brown with the following message: “This bill requires the District Agricultural Association 1-A (Cow Palace) to obtain approval from the County of San Mateo and the City and County of San Francisco prior to entering into a contract for a gun show on state property. I encourage all District Agricultural Associations to work with their local communities when determining their operations and events. This bill, however, totally pre-empts the Board of Directors of the Cow Palace from exercising its contracting authority whenever a gun show is involved. I prefer to leave these decisions to the sound discretion of the Board.”

SB 585 was vetoed by Governor Schwarzenegger, who stated: “This bill would prohibit the sale of firearms and ammunition at the Cow Palace. This bill would set a confusing precedent at the state level by statutorily prohibiting one District Agricultural Association (DAA) from selling firearms and ammunition, a legal and regulated activity, while allowing other DAAs to continue to do so. In addition, this bill would result in decreased state and local tax revenues by restricting events at the Cow Palace.”

6) **Argument in Support:** According to the NeverAgainCA: “NeverAgainCA organized large, peaceful protests at every gun show at the Del Mar Fairgrounds, attended and spoke at every meeting of the 22nd District Agricultural Association Board, and joined students protesting gun violence and gun shows at many area schools. NeverAgainCA presented resolutions calling for the elimination of the gun shows at the Del Mar Fairgrounds to the City Councils of the adjacent cities of Del Mar, Solana Beach and Encinitas; these resolutions were adopted and are part of the record of this hearing. Candidate and now Congressman Mike Levin addressed several of our rallies against the gun shows. At the request of NeverAGainCA, then Lt. Governor, now Governor, Gavin Newsom, called on the Fair Board to end gun shows and put an end to valuing the sale of firearms above the value of lives.

“NeverAgainCA is proud to support AB 893. The residents of the 78th AD and adjacent districts, and their elected representatives, have demonstrated the broad public support for ending gun shows at the Del Mar Fair Grounds on a permanent basis.”

7) **Argument in Opposition:** According to the California Rifle and Pistol Association, Inc.: “Promoters and operators of gun shows in California must comply with no less than twenty-six sections of the penal code. Gun sales are highly-regulated in California and the rules are no less stringent for those vendors at gun shows (Refer Exhibit #2 attached). Vendors that participate in gun shows may not do so unless all their licenses have been submitted to the California Department of Justice before the event for the purposes of determining whether the vendors possess the proper valid licenses. If they do not pass the review of the California DOJ, they are prohibited from participating.

…

“Gun shows are very much a family event. Many of them have training and education, guest speakers, lifestyle vendors, safety training, and more. Ever hear of a shooting spree at a gun
show? No, because people that attend gun shows are the law-abiding citizens that attend for
the educational value and to stay up on new products that are available. It is no different than
any other trade show that occurs in other industries across the state. Criminals would never
subject themselves to this much scrutiny and regulation in the hopes of getting their hands on
a firearm. These types of false and scare-tactic narratives have no place in modern
discourse."

8) **Related Legislation:** SB 281 (Wiener), among other things, would prohibit the sale of
firearms and ammunitions at the Cow Palace located in San Mateo County and San Francisco
County.

9) **Prior Legislation:**

a) SB 221 (Wiener) of the 2017-18 Legislative Session, would have prohibited the sale of
firearms and ammunitions at the Cow Palace located in San Mateo County and San
Francisco County. SB 221 was vetoed by Governor Brown.

b) SB 475 (Leno), of the 2013-14 Legislative Session, would have required gun shows at the
Cow Palace to have prior approval of both the Board of Supervisors of the County of San
Mateo and the City and County of San Francisco, as specified. SB 475 was vetoed by
Governor Brown.

c) SB 585 (Leno), of the 2009-10 Legislative Session, would have prohibited events in
which any firearm or ammunition is sold at the Cow Palace, as specified. SB 585 was
vetoed by Governor Schwarzenegger.

d) AB 2948 (Leno), of the 2007-08 Legislative Session, would have prohibited the sale of
firearms or ammunition at the Cow Palace. AB 2948 failed passage on the Senate Floor.

e) SB 1733 (Speier), of the 2003-04 Legislative Session, would have required gun shows at
the Cow Palace to have prior approval of both the Board of Supervisors of the County of
San Mateo and the City and County of San Francisco, as specified. SB 1733 failed
passage on the Assembly Floor.

f) AB 295 (Corbett), Chapter 247, Statutes of 1999, established the Gun Show Enforcement
and Security Act of 2000, which includes a number of requirements for producers that
promote gun shows.

g) AB 1107 (Ortiz), of the 1997-98 Legislative Session, would have authorized any city,
county or agricultural association to prohibit gun sales at gun shows or events. AB 1107
failed in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bay Area Student Activists
City of Del Mar
City of Encinitas
City of Solana Beach
NeverAgainCA

Oppose

B & L Productions, d.b.a. Crossroads of the West Gun Shows
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
Gun Owners of California, Inc.
National Rifle Association - Institute For Legislative Action
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International - California Chapters
Western Fairs Association

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

AB 901 (Gipson) – As Introduced February 20, 2019

SUMMARY: Limits the authority of a probation department to supervise and provide other services to minors to circumstances where the minor is within the jurisdiction of the juvenile court. Eliminates truancy as a criminal offense subject to the jurisdiction of the juvenile court. Specifically, this bill:

1) Limits the authority of a probation department to render direct and indirect services to those persons in the community who are on probation and subject to supervision under the jurisdiction of the juvenile court system, as specified.

2) Deletes the authority of the juvenile court to declare a person who is between 12 and 17 years of age a ward of the court based on truancy.

3) Requires peace officers to refer any minor between 12 years of age and 17 years of age, who persistently refuses to obey the reasonable orders of their parents, or who is beyond the control of that person, or who is a minor between 12 years of age and 17 years of age, inclusive, or when they violated any ordinance, to community-based diversion, if reasonably available, instead of issuing them a notice to appear in court.

4) Deletes the authority of a probation officer to, with consent of the minor and the minor’s parent or guardian, delineate specific programs of supervision for the minor, not to exceed six months, when the probation officer concludes that a minor is probably within the jurisdiction of the juvenile court.

5) Directs probation to encourage, rather than require, the parents or guardians of the minor to participate with the minor in counseling or education programs for informal probation supervision.

6) Requires a peace officer to refer a minor who commits specified low level conduct, including curfew violations, to community-based diversion if that diversion is reasonably available, before issuing a notice to appear in court.

7) Declares that it is the intent of the Legislature that certain local entities work closely with each other, minors, and the parents or guardians of minors to create coordinated diversion opportunities in their counties.

EXISTING LAW:

1) States that notwithstanding any other provision of law, probation departments may engage in activities designed to prevent juvenile delinquency. These activities include rendering direct
and indirect services to persons in the community. Probation departments shall not be limited to providing services only to those persons on probation being supervised as specified, but may provide services to any juveniles in the community. (Welf. and Inst. Code, § 236.)

2) Any county may, upon adoption of a resolution by the board of supervisors, establish an At-Risk Youth Early Intervention Program designed to assess and serve families with children who have chronic behavioral problems that place the child at risk of becoming a ward of the juvenile court. The purpose of the program is to provide a swift and local service response to youth behavior problems so that future involvement with the justice system may be avoided. ((Welf. and Inst. Code, § 601.5, subd. (a).)

3) Provides that if, upon consultation with the minor’s parents and with providers designated in the service plan, the supervising caseworker at the center and the liaison probation officer agree that the minor has willfully, significantly, and repeatedly failed to cooperate with the service plan, the minor shall be referred to the probation department which shall verify the failure and, upon verification, shall file a petition seeking to declare the minor a ward of the juvenile court. (Welf. and Inst. Code, § 601.5, subd. (g)(2).)

4) States that parent or guardian of a pupil of six years of age or more who is in kindergarten or any of grades one to eight, inclusive, and who is subject to compulsory full-time education, whose child is a chronic truant as specified, who has failed to reasonably supervise and encourage the pupil’s school attendance, and who has been offered language accessible support services to address the pupil’s truancy, is guilty of a misdemeanor punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Pen. Code, § 270.1, subd. (a).)

5) Provides that if a minor between 12 years of age and 17 years of age, inclusive, has four or more truancies within one school year, as defined, or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor’s persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. (Welf. and Inst. Code, § 601, subd. (b).)

6) Specifies that upon a finding that the minor violated the law by being truant, the judge shall direct his or her orders at improving the minor’s school attendance. The judge, referee, or juvenile hearing officer may do any of the following: (Welf. and Inst. Code, § 258, subd. (b)(6).)

   a) Order the minor to perform community service work, as specified, which may be performed at the minor’s school;

   b) Order the payment of a fine by the minor of not more than fifty dollars, for which a parent or legal guardian of the minor may be jointly liable;
c) Order a combination of community service work and payment of a portion of the fine; and,

d) Restrict driving privileges. The minor may request removal of the driving restrictions if he or she provides proof of school attendance, high school graduation, GED completion, or enrollment in adult education, a community college, or a trade program. Any driving restriction shall be removed at the time the minor attains 18 years of age.

7) States that the fourth time a truancy is issued within the same school year, the pupil may be within the jurisdiction of the juvenile court that may adjudge the pupil to be a ward of the juvenile criminal court. If the pupil is adjudged a ward of the court, the pupil shall be required to do one or more of the following: (Ed. Code, § 48264.5, subd. (d).)

a) Performance at court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 hours but not more than 40 hours over a period not to exceed 90 days, during a time other than the pupil’s hours of school attendance or employment;

b) Payment of a fine by the pupil of not more than $50 for which a parent or legal guardian of the pupil may be jointly liable;

c) Attendance of a court-approved truancy prevention program; and,

d) Suspension or revocation of driving privileges.

8) A pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the school day without a valid excuse on three occasions in one school year, or any combination thereof, shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district. (Ed. Code, § 48260, subd. (a).)

9) Provides that if a probation officer concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor a dependent child of the court or a minor or a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor’s parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction. (Welf. and Inst. Code, § 654.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “In many jurisdictions, youth who have never been accused of any criminal behavior and who have not had any prior criminal justice system contact are referred to probation programs without a court hearing. Often through
their schools, they’re subjected to ‘voluntary’ probation programs - required to check in with a probation officer, subjected to random searches, curfews, surprise home visits and interrogations - based on poor academic performance, poor attendance, or general school behavior issues to prevent juvenile delinquency. What this means is that they are then criminalized and, despite these programs being labeled ‘voluntary,’ parents and youth often feel coerced into them and do not have the benefit of speaking to an attorney. Furthermore, this process disproportionately affects those of color, who are consistently over-identified as ‘at-risk’ of delinquency and referred to informal supervision. AB 901 would ensure that youth receive appropriate interventions and are not criminalized for academic reasons or typical child/adolescent behavior by: limiting probation departments' overbroad discretion to provide services to any youth in the state they deem ‘at-risk,’ as well as ensuring that truancy or disobeying a teacher alone is not a reason to place a child under the jurisdiction of the juvenile court system.”

2) **Truancy and the School to Prison Pipeline:** More than 1 in 10 students statewide were chronically absent from school in 2017-18, meaning they missed at least 10 percent of the school year, according to recent data released by the California Department of Education. “The numbers are bad and getting slightly worse,” said Rob Manwaring, a senior education policy advisor for Children Now, a statewide child advocacy organization. Chronic absenteeism is “where the school to prison pipeline starts,” Manwaring said. “It’s where you can address a problem before it becomes a crisis.” ([https://edsource.org/2019/chronic-absenteeism-in-california-schools-up-slightly-new-data-show/607993](https://edsource.org/2019/chronic-absenteeism-in-california-schools-up-slightly-new-data-show/607993))

The school-to-prison pipeline refers to policies and practices that push students out of school and into the juvenile and criminal justice systems. The policies and practices include zero-tolerance discipline policies, policing in schools, and court involvement for minor offenses in school. Educational failure is one factor in the school-to-prison pipeline. While all parties view truancy as a problematic issue, there is disagreement about whether criminalizing truancy does more harm than good. This bill would eliminate truancy as a crime within the jurisdiction of the juvenile criminal court.

The Center for American Progress published a report in August 2015, which recommended reducing punitive policies in connection with truancy. That report recommended that schools, districts, and states should evaluate their anti-truancy policies, including zero-tolerance policies, and make punitive consequences, such as ticketing, fines imposed on students and/or their parents and guardians, or any punishment that removes students from the classroom, a last resort. The report recommended that punitive policies should be replaced with systems that support students and reinforce the importance of attendance. The report suggested that punitive policies could also be replaced with incentives for students and/or their families that reward school attendance. The report concluded that decriminalizing truancy will foster a positive and inclusionary school climate where students feel welcome and wanted and will reduce students encountering the legal system. (*The High Cost of Truancy*, Center for American Progress, August 2015, pg. 28-29.)

3) **Current Law Allows Probation to Provide Direct and Indirect Services to Prevent Juvenile Delinquency to Juveniles that Are Not Within the Jurisdiction of the Courts:**

Current law specifies that if a probation officer concludes that a minor is within the jurisdiction of the juvenile court or *will probably soon* be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor a dependent child of the
court or a minor or a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court and with consent of the minor and the minor’s parent or guardian, delineate specific programs of supervision for the minor, not to exceed six months, and attempt thereby to adjust the situation that brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction.

These programs are referred to as “informal probation.” Such programs can be a good alternative for a minor that has engaged in low level criminal behavior and has had little previous contact with the juvenile justice systems. Such programs are an alternative which avoids the need for a minor to appear in a juvenile justice court and potentially be determined a ward of the court. However, if such programs are being used with minors, when the minor’s conduct does not rise to the level that would make the minor eligible for the jurisdiction of the juvenile justice court, the diversionary benefit is not present. Such programs are no longer beneficial opportunities to avoid a more serious situation (juvenile justice court), but rather can feel like punishment for conduct that doesn’t rise to the level of criminality. Allowing probation to place individuals on a period of informal supervision for conduct that “will probably soon be” within the jurisdiction of the juvenile court is an amorphous standard.

Existing law also allows probation departments to engage in activities designed to prevent juvenile delinquency. These activities include rendering direct and indirect services to persons in the community. Probation departments are not limited to providing services only to those persons on probation being supervised as specified, but may provide services to any juveniles in the community. This bill would eliminate the ability for probation to provide direct and indirect services to a minor unless the minor is on some form of probation supervision and within the jurisdiction of the juvenile court. Advocates for this bill are concerned that allowing probation departments to provide programming to minors that do not fall within the jurisdiction of the juvenile court (have not committed a criminal offense) expands the scope of the juvenile justice system and makes it more likely that minors become involved in that system.

4) **Juvenile Justice Crime Prevention Act (JJCPA) Program:** The JJCPA program was created by the Crime Prevention Act of 2000 (Chapter 353) to provide a funding source for local juvenile justice programs aimed at curbing crime and delinquency among at-risk youth. JJCPA involves a partnership between the State of California, 56 counties, and various community-based organizations to enhance public safety by reducing juvenile crime and delinquency. Local officials and stakeholders determine where to direct resources through an interagency planning process; the State appropriates funds, which the Controller’s Office distributes to counties on a per capita basis; and community-based organizations play a critical role in delivering services. The funding eligibility criteria prescribed by state law for JJCPA-funded programs requires counties to limit JJCPA spending to “programs and approaches that have been demonstrated to be effective in reducing delinquency.” (http://www.bsec.ca.gov/downloads/JJCPA%20Report%20Final%204.2.201520mr-r.pdf)

5) **Argument in Support:** According to the Pacific Juvenile Defender Center, “We recognize that several of the statutes that would be limited by A.B. 901 were enacted for benevolent purposes. Welfare and Institutions Code section 236, for example, was enacted in 1976 with a goal of allowing probation to serve ‘any juveniles in the community,’ to prevent
involvement in the juvenile delinquency. Unfortunately, this sweeping power has resulted in well-documented abuses, such as the Los Angeles County ‘voluntary probation’ program which placed youth having problems at school under probation officer supervision, where they were essentially treated like youth under court supervision, and handled by officers with no expertise in dealing with school related issues. (Patricia Soung, et al., WIC 236 "Pre-Probation" Supervision of Youth of Color With No Prior Court or Probation Involvement (2016); Celeste Fremon, LA County Probation Planning To Shut Down Controversial ‘Probation Lite’ Youth Program, Juvenile Justice Information Exchange (Feb. 14, 2018).)

“Similarly, Welfare and Institutions Code section 601 was enacted to provide a ‘status offender’ niche for youth who were truant, had run away, or were incorrigible, but who had not committed a crime. The problem is that the court system is not set up to actually deal with the complex problems that those youth have. The juvenile system functions primarily through ordering youth to do things and then sanctioning them if they do not do them. Few probation officers, prosecutors or judges have the knowledge to understand, for example what causes a child not to go to school and what to do about it.

“Further, the existing ‘informal supervision’ law, Welfare and Institutions Code section 654, goes too far in not only applying to youth the probation officer believes has committed an offense, but also to youth who ‘will probably soon be’ within the jurisdiction of the court. While Section 654 is not formal probation, it still subjects the young person to a series of very intrusive conditions, and if performance is not satisfactory, the case may be formally prosecuted.

“In sum, our systems of juvenile diversion are utterly unsuccessful in actually helping the young person to avoid contact with the formal justice system. This is troubling because abundant research indicates that formal system processing results in substantially worse outcomes for youth. (Anthony Petrosino, et al., Formal System Processing of Juveniles: Effects on Delinquency (2010).) A number of the studies are included in the intent language for A.B. 901.”

6) Argument in Opposition: According to the California District Attorneys Association, “Under current law, probation departments are permitted to render services designed to prevent juvenile delinquency to ‘persons in the community,’ whether or not they are currently on probation or subject to informal juvenile supervision (W&IC 654, 654.2), non-wardship probation (W&IC 725), or DEJ (W&IC 790). This bill limits probation departments to providing such services only to persons on probation or supervision pursuant to Sections 654, 654.2, 725, or 790. Limiting the persons who can receive services designed to prevent juvenile delinquency seems to be a step backward in addressing this issue.

“Additionally, W&IC 258(b) sets forth the procedure to be used when a minor is before the court as the result of a written notice to appear issued to a minor by an officer or school administrator due to habitual truancy (Section 601(b)), as well as the orders that may be imposed following a finding of violation. This bill deletes current Section 258(b) in its entirety, and also deletes Section 601(b) (which is the truancy section of that statute) in its entirety. Chronic truancy is recognized as a reliable predictor of future criminality. While juvenile court proceedings pursuant to W&IC 601 cannot and should
not be viewed as the only method of intervention in these cases, the structure and supervision that can be provided by the juvenile court is a valuable tool in addressing truancy in certain cases. Depriving minors, their parents or guardians, and the school administrators who care about the future of our youth, of the resources available through the juvenile court will only exacerbate the truancy problem and make the challenge of effective intervention more difficult.

“Third, this bill amends W&IC 654 which would eliminate the requirement that parents or guardians participate in programs with minors on informal supervision. One of the principal goals of the juvenile justice system is strengthening family ties— it is enshrined in W&IC 202. No doubt being with their parents will help the minors improve, then that should be the priority.”

7) **Related Legislation:** SB 716 (Mitchell), would require a county probation department to ensure that juveniles with a high school diploma or equivalency certificate who are detained in a juvenile hall, ranch, or camp have access to a full array of postsecondary academic and career technical education programs of their choice. SB 716 is awaiting hearing in the Senate Public Safety Committee.

8) **Prior Legislation:**

   a) SB 1296 (Leno), Chapter 70, Statutes of 2014, prohibited a court from imprisoning, holding in physical confinement, as defined, or otherwise taking into custody persistently or habitually truant minors for contempt of court if the contempt consists of the minor’s failure to comply with a court order to attend school. SB 1296 also authorized a court, if those minors are found to be in contempt of court for that reason, to issue any other lawful order, as necessary, to secure the minor’s attendance at school.

   b) AB 1643 (Buchanan), Chapter 879, Statutes of 2014, added a representative of the county district attorney’s office and a representative of the county public defender’s office to county and local school attendance review boards (SARBs) and makes changes to the provisions governing SARBs.

   c) AB 1672 (Holden), of the 2013-2014 Legislative Session, would have expanded the data that local SARBs are currently required to submit to the county superintendent of schools, to include specific data regarding chronic absenteeism, and referrals to SARBs or other interventions.

   d) SB 1317 (Leno), Chapter 647, Statutes of 2010, created a misdemeanor when a parent or guardian of a pupil of six years of age or older who is in kindergarten or any of Grades 1 to 8, inclusive, and who is subject to compulsory full-time education whose child is a chronic truant, and has failed to reasonably supervise and encourage the pupil’s school attendance.
REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
Public Counsel (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
Alliance for Boys and Men of Color
California Public Defenders Association
Center on Juvenile and Criminal Justice
Children's Law Center of California
Dolores Huerta Foundation
Ella Baker Center for Human Rights
Equal Justice Society
Legal Services for Prisoners with Children
Pacific Juvenile Defender Center
The W. Haywood Burns Institute
The Women's Foundation of California

Oppose

California District Attorneys Association
California State Sheriffs' Association
Chief Probation Officers of California
Del Norte County Probation
Fraternal Order of Police, Northern California Probation, Lodge 19
Sacramento County Probation Association
San Joaquin County Probation Officers Association
State Coalition of Probation Organizations

1 Private Individual

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
Date of Hearing: March 26, 2019
Counsel: Sandy Uribe

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

AB 907 (Grayson) – As Introduced February 20, 2019

As Proposed to be Amended in Committee

SUMMARY: Creates a new crime of threatening a school or place of worship. Specifically, this bill:

1) Provides that any person who, by any means including via an electronic act, willfully threatens to commit a crime which is reasonably likely to result in death or great bodily injury to any person who may by on the grounds of a school or place of worship, with the specific intent that the statement be taken as a threat, even if there is no intent to carry it out, and where the statement on its face and under the circumstances in which it is made is so unequivocal, unconditional, and specific as to convey a gravity of purpose and immediate prospect of execution of the threat, and which causes a person or persons reasonably to be in sustained fear for their own safety or that of another, is guilty of a crime.

2) Punishes the crime of threatening a school or place of worship as either a misdemeanor with imprisonment in the county jail for up to one year, or as a felony with imprisonment in the county jail pursuant to realignment.

3) States that this section does not preclude punishment under any other law, but prohibits dual conviction for this crime and the general criminal threats statute based on the same threat.

4) Defines the following terms for purposes of this crime:

   a) “Electronic act” means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, a message, text, sound, video, or image; a post on a social network Internet website; or an act of cyber sexual bullying;

   b) “Place of worship” means “any church, synagogue, temple, mosque, or other building where religious services are regularly conducted;” and,

   c) “School” means “a state preschool, a private or public elementary, middle, vocational, junior high, or high school, a community college, a public or private university, or a location where a school-sponsored event is or will be taking place and the threat is related to both the school-sponsored event and to the time period during which the school-sponsored event will occur.”

EXISTING LAW:
1) States that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement made (either verbally, in writing, or by means of an electronic device) is to be taken as a threat, even if there is no intent of carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, and which thereby causes the person reasonably to be in sustained fear for their own safety or that of their family, is guilty of a crime punishable either as a misdemeanor or felony, as specified. (Pen. Code, § 422.)

2) States that any person who with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution to do, or refrain from doing, any act in the performance of his or her duties, by means of a directly-communicated threat to the person, to inflict unlawful injury upon any person or property, and it reasonably appears to the recipient that such threat could be carried out, is guilty of a crime. (Pen. Code, § 71, subd. (a).)

3) States that any person who with intent to annoy, telephones another or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person’s family, or to the person’s property is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)

4) Provides that any person who with intent to cause, attempts to cause or causes, another to refrain from exercising his or her religion or from engaging in a religious service by means of a threat directly communicated to such a person to inflict an injury upon the person or property, and it reasonably appears to the recipient that such a threat could be carried out, is guilty of a felony. (Pen. Code, § 11412.)

5) Provides that any person who knowingly threatens to use a weapon of mass destruction with the specific intent that the statement, as defined, or a statement made by means of an electronic device, is to be taken as a threat, even if there is no intent of carrying it out, which on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution, and thereby causes the person reasonably to be in sustained fear of for personal safety or that of their family is guilty of a crime. (Pen. Code, § 11418.5, subd. (a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, “In 81% of school shooting incidents, at least one other person was aware of the shooter’s plans, and in the digital age, threats are often made or shared through social media platforms. However, right now in California, if you post online your plans to commit violence against a school or place of worship, with a gun or otherwise, law enforcement has a limited ability to pursue a criminal prosecution. It is inconsistent with the intent of the law that someone will be criminally prosecuted for threatening violence against an individual, but won’t be when they are threatening an entire campus or religious institution. AB 907 will update our laws to ensure that we are treating
threats against our schools and places of worship with the gravity they demand."

1) **First Amendment: Restrictions on Threatening Speech**: The First Amendment to the United States Constitution states: "Congress shall make no law . . . abridging the freedom of speech . . ." This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal. 4th 121, 133-134, citing Gitlow v. People of New York (1925) 268 U.S. 652, 666.) Article I, section 2, subdivision (a) of the California Constitution provides that: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

While these guarantees are stated in broad terms, "the right to free speech is not absolute." (Aguilar v. Avis Rent A Car System, Inc., supra, 21 Cal. 4th at p. 134, citing Near v. Minnesota (1931) 283 U.S. 697, 708; and Stromberg v. California (1931) 283 U.S. 359.) As the United States Supreme Court has acknowledged: "Many crimes can consist solely of spoken words, such as soliciting a bribe (Pen. Code, § 653f), perjury (Pen. Code, § 118), or making a terrorist threat (Pen. Code, § 422)." In In re M.S. (1995) 10 Cal.4th 698, 710, the court held that "the state may penalize threats, even those consisting of pure speech, provided the relevant statute singles out for punishment threats falling outside the scope of First Amendment protection." Nonetheless, statutes criminalizing threats must be narrowly directed against only those threats that truly pose a danger to society. (People v. Mirmirani (1981) 30 Cal.3d 375, 388, fn. 10.)

The First Amendment permits states to ban a true threat. (Watts v. United States (1969) 394 U.S. 705, 708.) True threats are "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." (Virginia v. Black (2003) 538 U.S. 343, 359, citing Watts v. United States, supra, 394 U.S. at 708.)

Recently, the Supreme Court again reviewed criminal threats and the mental state required. (Elonis v. United States (2015) 135 S.Ct. 2001.) Elonis was convicted of making criminal threats against his soon-to-be ex-wife and others after he posted several rap lyrics that included graphically violent language and imagery on his Facebook page. There were added disclaimers that the lyrics were "fictitious" and his writings were "therapeutic" and helped him "deal with the pain." (Id. at 2004-2005.) At trial, the court instructed the jury that Elonis could be found guilty if a reasonable person would foresee that his statements would be interpreted as a threat. (Id. at 2007.) The prosecution's closing argument also emphasized that it was irrelevant whether Elonis intended the Facebook postings to be threats. (Ibid.) The appellate court held that the prosecution only had to show that Elonis intentionally made the communication, not that he intended to make a threat. (Ibid.) The Supreme Court reversed that decision and overturned Elonis' conviction finding that the prosecution failed to make a showing of Elonis' subjective intent.

Elonis' conviction was based on how his Facebook posts would be understood by a reasonable person, rather than his subjective intent. The Court rejected the use of this standard, asserting that “[h]aving liability turn on whether a 'reasonable person' regards the communication as a threat—regardless of what the defendant thinks— 'reduces culpability on the all-important element of the crime to negligence,’ and we ‘have long been reluctant to
infer that a negligence standard was intended in criminal statutes.’ Under these principles, ‘what [Elonis] thinks’ does matter.” (Elonis v. United States, supra, 135 S.Ct. at p. 2011.)

This bill would require a showing of specific intent on the part of the person communicating the threat, rather than negligence or even recklessness. This is the highest level of culpability required for a crime, which satisfies the Supreme Court’s ruling in both Elonis v. United States, supra, and Virginia v. Black, supra. Additionally, this bill would require that the threat on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat. This language is contained in current statutes punishing true threats and has been accepted by the California Supreme Court. (People v. Mirmirani, supra, 30 Cal.3d at p. 388, fn. 10, quoting United States v. Kelner, (2nd Cir. 1976) 534 F.2d 1020.) Thus, it appears that the provisions in this bill would likely pass constitutional muster.

2) **Elements Required for Criminal Threat Prosecutions:** In order to convict a person under the current criminal threat statute, Penal Code section 422, the prosecutor must prove the following:

a) that the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;

b) that the defendant made the threat;

c) that the defendant intended that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;

d) that the threat was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat;

e) that the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family’s safety; and

f) that the threatened person's fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also People v. Toledo (2001) 26 Cal.4th 221, 227-228.)

Penal Code section 422 applies to all criminal threats which will result in death or great bodily injury regardless of location or the exact type of violence that is threatened.

This bill seeks to create the specific crime of criminal threats when the threat is to take place on a school campus or place of worship. Some prosecutors argue that the current criminal threats statute does fit well into instances of threats of shootings at schools because often times these threats do not specify who the target is. Rather, the threat typically applies to all students or staff at the school.

A recent example illustrating the existing law’s application to threats of violence on school grounds made by means of an electronic act, such as social media, can be found in an appellate court’s recent ruling. **(In re L.F. (June 3, 2015, A142296) [nonpub. opn.]; Egelko,**
Smiling Emojis Aside, Student’s Threats Were Serious, Court Says, San Francisco Chronicle, (June 4, 2015) <http://www.sfgate.com/crime/article/Smiling-emojis-aside-student-s-threats-were-6307626.php> [as of June 8, 2015].) The adjudged minor was a Fairfield High School student who posted on her Twitter account that she planned to bring a gun to school and shoot people. While she did note specified areas of the school and one of the campus monitors by name in some of her posts, her Tweets were generally targeted at all of the students and staff at the school. The petition filed against the minor alleged that the minor had made criminal threats against "Fairfield High School students and staff" instead of listing specific persons. (Id. at p. 4.) The appellate court affirmed the juvenile court’s ruling that the minor had violated the existing criminal threats statute, and found that the minor intended her comments to be taken as threats, even though she contended that she was only joking. (In re L.F., supra, A142296. at p. 8.)

So, while the current statute is sufficient to prosecute such conduct, this bill would specify that it is sufficient for the person, or persons, who become aware of the threat to reasonably be in sustained fear for their own safety or that of any other person who may be on the grounds of a school or place of worship.

3) Recent Governor Vetoes: Two bills introduced in the 2015-2016 Legislative session would have specifically addressed threats at schools. SB 456 (Block) would have provided that any person who threatens to discharge a firearm on a school campus or at a location where a school-sponsored event is or will to take place, is guilty of an alternate felony-misdemeanor. SB 110 (Fuller) would have enacted a new crime prohibiting anyone willfully threatening unlawful violence to another person by any means, including through an electronic act, to occur upon school grounds, with the specific intent that the statement be taken as a threat, and where the threat, on its face and under the circumstances in which it is made, was so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat.

Governor Brown had the following veto message as to both bills:

"No one could be anything but intolerant of threats to cause great bodily injury, especially on school grounds. Certainly not legislators, who voted nearly unanimously for this bill.

"While I’m sympathetic and utterly committed to ensuring maximum safety for California’s school children, the offensive conduct covered by this bill is already illegal.

"In recent decades, California has created an unprecedented number of new and detailed criminal laws. Before we keep enacting more, I think we should pause and reflect on the fact that our bulging criminal code now contains in excess of 5,000 separate provisions, covering almost every conceivable form of human misbehavior."

4) Punishment for Criminal Threats: The existing crime of criminal threats is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also becomes a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, 1192.7, subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally it triggers credits limitations. (Pen. Code, § 1170.12.) (See also People v. Moore (2004) 118 Cal.App.4th 74.)
This bill does not add the newly-created crime of criminal threats directed at a school or place of worship to the serious-felony list. Therefore, credits limitations and future enhanced penalty provisions for prior convictions would not apply.

This bill specifies that a perpetrator can be prosecuted for a threat under the general criminal threats statute, Penal Code section 422, or any other law; but that the person cannot be convicted for both the general statute and this more particularized one.

5) **Argument in Support:** According to the Hindu American Foundation, “In 2018, there was a record high of 97 school gun violence incidents, and with those incidents, a heightened fear for students that a tragedy could occur in their own school. According to a report from the U.S. Secret Service, in 81% of school shooting incidents, at least one other person was aware of the shooter’s plans.

“Hate groups were also emboldened in the last year with the Anti-Defamation League reporting that incidents of white supremacist propaganda in the United States increased 182% from 2017. Violence against places of worship reached national headlines in cases such as the Pennsylvanian synagogue shooting wherein 11 Jewish worshipers were killed, a Georgian mosque that received multiple threats of being ‘blown up’, and a predominantly black church in Kentucky that a gunman tried to enter before ultimately taking the lives of two people.

“When a school or place of worship is threatened, it can directly cause reasonable and immediate fear for anyone on that institution’s property. However, because the threat is not directed against one or many specifically named individuals, pursuing a criminal threat prosecution is impractical and largely unsuccessful resulting in a lack of consequences for those purposefully causing fear in communities.”

6) **Argument in Opposition:** According to the American Civil Liberties Union of California, “AB 907 is unnecessary, covering behavior that can already be prosecuted under existing law. The threats covered by this bill – threats of damage to the property of a school or place of worship by means reasonably likely to result in death or great bodily injury to persons who may be present, which cause disruption – are already punishable under existing law. Penal Code section 422 has been interpreted to apply in a situation where a threat is made to a third party and conveyed to a person who then reasonably becomes fearful. In Re David L. (1991) 234 CalApp.3d 1655, 1657. If a school administrator receives a threat from someone saying they will blow up the school, and then takes action in response to that threat, for example closing the school for some period, and as a result the students and staff learn of the threat and become fearful, the person making the threat could be prosecuted under section 422. In recent years, the law has been applied to young people making social media threats against their schools.

“Moreover, we caution against expanding the existing law when enforcement of that law is often problematic. Penal Code section 422, like AB 907, does not require that the person making the threat have either the intent or the ability to carry it out, or that the person take any action to carry out the threat. Defendants – often young people, or individuals with mental health issues – can face punishment, and even felony penalties, for something they said with no intent to do anything about it.”
7) Prior Legislation:

   a) AB 2768 (Melendez), of the 2017-2018 Legislative Session, was similar to this bill. AB 2768 was held in the Assembly Appropriations Committee.

   b) SB 110 (Fuller), of the 2015-2016 Legislative Session, would have made it an alternate felony-misdemeanor offense for any person to willfully threaten unlawful violence that will result in death or great bodily injury to occur on the grounds of a school, as defined, where the threat creates a disruption at the school. SB 110 was vetoed by the Governor.

   c) SB 456 (Block), of the 2015-2016 Legislative Session, would have specified that any person who threatens to discharge a firearm on the campus of a school, as defined, or location where a school-sponsored event is or will be taking place, is guilty of an alternate felony-misdemeanor. SB 456 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Defamation League
California District Attorneys Association
California Police Chiefs Association
Contra Costa County, District Attorney
Hindu American Foundation, Inc.

Oppose

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Amended Mock-up for 2019-2020 AB-907 (Grayson (A))

Mock-up based on Version Number 99 - Introduced 2/20/19
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 422.2 is added to the Penal Code, to read:

422.2. (a) A person who, by any means, including, but not limited to, an electronic act, willfully threatens damage to the property of a school or place of worship, by means that are to commit a crime which is reasonably likely to result in death or great bodily injury to any person who may be on the grounds of the a school or place of worship, with the specific intent that the statement is to be taken as a threat, even if there is no intent of carrying it out, and where the threat on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat, and that threat creates a disruption at the school or place of worship which causes a person or persons reasonably to be in sustained fear for their own safety or that of another, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(b) This section does not preclude or prohibit prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and Section 422.

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

(1) “Disruption” means interference with peaceful activities of the school or place of worship.

(2) (1) “Electronic act” has the same meaning as in paragraph (2) of subdivision (r) of Section 48900 of the Education Code.

(3) (2) “Place of worship” means any church, synagogue, temple, mosque, or other building where religious services are regularly conducted.

(4) (3) “School” means a state preschool, a private or public elementary, middle, vocational, junior high, or high school, a community college, a public or private university, or a location where a school-sponsored event is or will be taking place and the threat is related to both the school-sponsored event and to the time period during which the school-sponsored event will occur.

Sandy Uribe
Assembly Public Safety Committee
03/21/2019
Page 1 of 2
SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
SUMMARY: Reduces the timelines for a certifying entity to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. Specifically, this bill:

1) Requires a certifying entity to process victim certification for purposes of obtaining a U-Visa or T-Visa within 30 days of the request rather than 90, unless the non-citizen is in removal proceedings, in which case the certification must be processed in 7 days, rather than the current 14.

2) Requires the local law enforcement agency with whom the U-visa or T-visa applicant has filed a police report to provide a copy of the report to the victim, victim’s family member, or the victim’s immigration attorney within seven days of the request.

3) Allows a victim’s immigration attorney to request the necessary certification of victim helpfulness for purposes of obtaining a U-Visa or a T-Visa.

EXISTING FEDERAL LAW:

1) Allows an immigrant who has been a victim of a crime to receive a U-visa if the Secretary of Homeland Security determines the following:

a) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;

b) The petitioner, of if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;

c) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity as described;

d) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,

e) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest;
domestic violence; sexual assault; abusive sexual contact; prostitution; sexual
exploitation; stalking; female genital mutilation; being held hostage; peonage;
involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint;
false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault;
worst tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or
attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8

2) Allows an immigrant to receive a T-visa if the Secretary of Homeland Security determines
the following:

a) The person is or was a victim of a severe form of trafficking in persons (which may
include sex or labor trafficking), as defined by federal law;

b) The person is in the United States, American Samoa, the Commonwealth of the Northern
Mariana Islands or at a U.S. port of entry due to trafficking;

c) The person has complied with any reasonable request from a law enforcement agency for
assistance in the investigation or prosecution of human trafficking; and,

d) The person would suffer extreme hardship involving unusual and severe harm if removed
from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

EXISTING STATE LAW:

1) Requires certifying agencies, upon the request of an immigrant victim of crime or his or her
family member, to certify victim helpfulness on the applicable form so that he or she may
apply for a U-visa. (Pen. Code, § 679.10, subd. (e).)

2) Creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is
likely to be helpful, if the victim has not refused or failed to provide information and
assistance reasonably requested by law enforcement. (Pen. Code, § 679.10, subd. (f).)

3) Mandates certifying entities to complete the certification within 90 days of the request,
except in cases where the applicant is in immigration removal proceedings, in which case the
certification must be completed within 14 days of the request. (Pen. Code, § 679.10, subd.
(h).)

4) Requires certifying agencies, upon the request of an immigrant human-trafficking victim or
his or her family member, to certify victim helpfulness on the applicable form so that he or
she may apply for a T-visa. (Pen. Code, § 679.11, subd. (e).)

5) Creates a rebuttable presumption that an immigrant human-trafficking victim is helpful, has
been helpful, or is likely to be helpful, if the victim has not refused or failed to provide
information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.11,
subd. (f).)

6) Mandates certifying entities to complete the certification within 90 days of the request,
except in cases where the applicant is in immigration removal proceedings, in which case the
certification must be completed within 14 days of the request. (Pen. Code, § 679.11, subd. (h).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author's Statement:** According to the author, "Recently the Trump Administration has implemented several policies through the US Department of Justice which has hindered due process in immigration court and has tied the hands of judges. These policies further the aggressive attacks by this administration on immigrant communities, but also come at the expense of the general public safety of the communities that immigrants live in.

"I have introduced AB 917 to enhance the overall public safety of Californians to ensure that immigrants who are victims of crimes and cooperate with local law enforcement in good faith, local agencies will provide the needed documentation that protects them from deportation. It is crucial that the government keeps the promises for immigrant victims. Furthermore, as a state we must do everything within our means to assist in those efforts and mitigate federal policies that seek to hinder that promise. Due to current tactics used by federal law enforcement, many immigrants are unwilling to come forward, but will be given greater assurance in working with law enforcement. This keeps not only our immigrant communities safe, but makes all communities safer."

2) **U Visas:** In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U-Visa to provide immigrant crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by undocumented victims of crime. In order to qualify for a U-Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

In order to apply for a U-Visa, the qualified immigrant victim must obtain a certification of helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U-Visa statute. This certification form is called a Form I-918. While in some jurisdictions the appropriate agencies have been supportive of immigrant victims and have readily signed From I-918 when the immigrant victims have been helpful, other jurisdictions have shown a reluctance to sign these certification forms.

3) **T Visas:** "The Victims of Trafficking and Violence Prevention Act (VTVP) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVP, created the T nonimmigrant status ("T-visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false
promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See U and T Visa Law Enforcement Resource Guide, Department of Homeland Security, p. 9, <https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%202011.pdf>.)

"The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (Id. at pp. 9-10.)

To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form of trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (Id. at p. 9.)

Although declaration is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (Id. at pp. 10-11.)

4) **Immigration Policies under the Trump Administration:** Under the current presidential administration, there have been several policies implemented for immigration courts aimed at prioritizing the removal of undocumented persons. Most notably, in an effort to speed up deportations, last year the administration imposed case quotas on immigration judges which are tied to the judges' annual performance reviews.¹ The judges are required to process a minimum of 700 cases annually in order to obtain a "satisfactory" rating. "The system sets up additional bench marks, penalizing those who refer more than 15 percent of certain cases to higher courts, or judges who schedule hearing dates too far apart on their calendars." (See N. Miroff, Trump Administration, Seeking to Speed Deportations, to Impose Quotas on Immigration Judges, Washington Post, April 2, 2018 available at <https://www.washingtonpost.com/world/national-security/trump-administration-seeking-to-speed-deportations-to-impose-quotas-on-immigration-judges/2018/04/02/a282d650-36bb-11e8-b57c-9445cc4d4fa5e_story.html?utm_term=.81021be888a8d>.) The immigration judges' union has denounced this plan alleging, "This is an unprecedented act which compromises

¹ Unlike federal judges who are part of an independent branch of government, immigration judges are part of the Department of Justice.

In light of the administration’s efforts to speed up deportations, this bill seeks to reduce the time certifying officials have to process victim certification requests, and allows attorneys representing such victims in immigration proceedings to request victim certification from certifying officials on the victim’s behalf. This bill would also require law enforcement to provide such a crime victim with a police report within seven days of a request. These measures are an effort to assist immigrant victims of crime who might qualify for affirmative relief through the U-Visa and T-Visa programs.

5) **Argument in Support:** According to the *Coalition for Humane Immigrant Rights*, the sponsor of this bill, “In 2000 Congress enacted The Victims of Trafficking and Violence Attack which created U and T Visas to strengthen the relationship between immigrant communities and law enforcement. This ensured that victims of trafficking and certain crimes were protected from deportation to assist in the investigation they had brought forward. In 2012 the Board of Immigration Appeals (BIA) reaffirmed the United States’ position to provide protections to those eligible for both visas as its decision on *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012) which directed immigration judges to delay a deportation proceeding if a U or T Visa had been filed and was pending. However, under this administration immigrants eligible for either program are in threat of deportation due to the aggressive attacks on the immigrant community and lack of due process in immigration court rooms.

“Under the Trump administration several policies have been implemented through executive orders and memos from the US Attorney General that have fast tracked deportation proceedings while tying the hands of immigration judges. Some of these new policies include prioritizing all undocumented individuals for removal, creating benchmarks for immigration judges that included hearing 95% of their cases during on the first scheduled date, denying continuance for those with pending applications at US Citizenship and Immigration Services (USCIS), and have USCIS turn over denied applications to ICE 4. In addition to policies the Trump Administration has attacked the current immigration process by doubling the backlog of applications and not meeting the 10,000 U Visa application cap since 2010.

“Therefore, it is imperative that during these times California provides the necessary relief the federal government is refusing to offer that is prescribed in federal statute. AB 917 allows for local law enforcement and immigrant communities to strengthen their relationship as it has been significantly hindered by current immigration enforcement tactics and policies. By mirroring the current immigration court process California could provide relief to thousands immigrants who qualify for a U or T Visa therefore enhancing the general public safety of all Californians.”

6) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “Victim cooperation can be extremely valuable when investigating criminal offenses. That said, existing law on this matter requires specified officials to sign these requests and contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement
discretion. The determination of whether a victim is being helpful should be the sole
province of the law enforcement entity being asked to sign the certification at issue here and
only with regard to the nature of the victim’s cooperation.

“Allowing more parties to “request” the certification and decreasing the time available to do
such further takes the decision out of the hands of the appropriate public official and creates
time and resource pressures to meet the accelerated timelines of the bill. For these reasons,
we must respectfully oppose AB 917.”

7) Related Legislation:

a) AB 1073 (Rubio), would authorize the Attorney General to enter into a memorandum of
understanding with ICE to treat shelters in this state that provide services to individuals
who are victims of domestic violence or sexual assault as sensitive locations for purposes
of federal immigration enforcement activities. AB 1073 is pending hearing in this
committee.

b) AB 1408 (Mathis), would allow information regarding the release or transfer of an
individual to be provided to ICE if the individual is deemed a medium or high risk by the
pretrial risk assessment or if the sheriff or chief of police of the arresting agency deems
the individual to be a risk or danger to public safety. AB 1408 is pending hearing in this
committee and the Assembly Judiciary Committee.

8) Prior Legislation:

a) AB 2027 (Quirk), Chapter 749, Statutes of 2016, requires, upon the request of an
immigrant victim of human trafficking, a certifying agency to certify victim cooperation
on the applicable form so that the victim may apply for a T-Visa to temporarily live and
work in the United States.

b) SB 674 (De Leon), Chapter 721, Statutes of 2015, provides that, upon request of a victim
or victim’s family member, a certifying official from a certifying entity shall certify
victim helpfulness on the applicable U-Visa certification form when the victim was a
victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to
be helpful to the detection, investigation, or prosecution of that criminal activity.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition for Humane Immigrant Rights (Sponsor)
American Civil Liberties Union of California
California Public Defenders Association

Oppose

California State Sheriffs’ Association
Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Requires a law enforcement official to inform a witness or victim of a gang-related offense that that person’s name could be made public under the California Public Records Act (CPRA), and collect articulable evidence, if appropriate, to support a conclusion that disclosure of the person’s name would endanger that person’s safety. Specifically, this bill:

1) Requires an employee of a law enforcement agency who personally receives a report alleging the commission of a gang-related offense to inform a victim or witness of such offense that the victim’s or witness’s name will become a matter of public record unless the law enforcement agency determines that release of the victim’s or witness’s name would endanger that person’s safety.

2) Requires an employee of a law enforcement agency who personally receives a report alleging the commission of a gang-related offense to inform a victim or witness that that person may provide the agency with evidence that an articulable threat exists that supports a conclusion that disclosure of that person’s name would endanger their safety.

3) Requires a written report of a gang-related offense indicate: a) that any victim or witness has been properly informed of the possibility of their name being made public, and b) that the person may provide evidence of an articulable threat. The law enforcement employee shall memorialize that person’s responses in the written report.

4) Instructs a law enforcement agency to consider evidence that an articulable threat exists that supports a conclusion that the disclosure of a victim’s or witness’s name would endanger their safety in making the determination that disclosure of the victim’s or witness’s name would endanger the victim or witness.

5) Prohibits a law enforcement agency from disclosing to a person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation (CDCR), hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the name of victim or witness when the law enforcement agency has determined that disclosure of the victim’s or witness’s name would endanger the victim or witness. Limits this access to the victim or witness name deemed confidential to only a parole officer of CDCR, hearing officer of the parole authority, and probation officer of county probation department that is supervising or investigating the person who is alleged to commit the gang-related offense.

6) Makes legislative findings that the interest in protecting the safety of a victim or witness involved in a gang-related offense that it is appropriate to permit those victims and witnesses
to provide evidence that an articulable threat exists that supports a conclusion that the disclosure of their name would endanger their safety.

EXISTING LAW:

1) Establishes that it is a crime to actively participate in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and to willfully promote, further, or assist in any felonious criminal conduct by members of that gang. (Pen. Code, § 186.22.)

2) Establishes the CPRA and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)

3) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 6250 et seq.)

4) Prohibits a state or local agency from allowing another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter. (Gov. Code, § 6253.3.)

5) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)

6) Permits an agency to withhold records of complaints to, or investigations conducted by an agency, as specified, for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254 subd. (f).)

7) Requires an agency to produce information contained in an investigatory record, as specified, unless disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. (Gov. Code, § 6254 subd. (f).)

8) Requires the disclosure of the full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds. (Gov. Code, § 6254 subd. (f)(1).)

9) Requires the disclosure of the substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the
report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. (Gov. Code, § 6254 subd. (f)(1).)

10) Provides that an agency shall refuse to disclose the name of a victim of any certain crimes, as specified, including sexual assault, rape, human trafficking, domestic violence, prostitution, injury to or molestation of a child, stalking, may be withheld at the victim’s request, or at the request of the victim’s parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime as specified may be deleted at the request of the victim, or the victim’s parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements as specified. (Gov. Code, § 6254 subd. (f)(2)(a).)

11) Provides that an agency may refuse to disclose the names and images of a victim of human trafficking, and of that victim’s immediate family, other than a family member who is charged with a criminal offense arising from the same incident, at the victim’s request until the investigation or any subsequent prosecution is complete. (Gov. Code, § 6254 subd. (f)(2)(b).)

12) Requires the disclosure of the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigation, except as specified. (Gov. Code, § 6254 subd. (f)(3).)

13) Provides that commencing July 1, 2019, a video or audio recording retained or owned by an agency at the time of the request that relates to a “critical incident,” as defined, must be disclosed unless the agency demonstrates that it is necessary to delay disclosure to ensure the successful completion of an investigation. (Gov. Code, § 6254 subd. (f)(4).)

14) Allows an agency to demonstrate, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording. In that case, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. (Gov. Code, § 6254 subd. (f)(4)(B)(i).)

15) Provides that if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:
a) The subject of the recording whose privacy is to be protected, or his or her authorized representative;

b) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected; and,

c) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected. (Gov. Code, § 6254 subd. (f)(4)(B)(ii).)

16) Requires an employee of a law enforcement agency who personally received a report from a person alleging that he or she has been the victim of a sex offense, to inform the person making the report that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record. Provides that if the victim makes this request then the law enforcement agency shall not disclose the name of a victim, except as specified. (Penal Code Section 293 (a)-(d).)

17) Provides that any victim of a sexual crime who has not elected to exercise his or her right to keep his or her name confidential may request to be identified in all court records and proceedings as either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to the protect the privacy of the person and will not unduly prejudice the prosecution or the defense. (Penal Code Section 293.5.)

18) Requires the prosecuting attorney to disclose to the defendant or his or her attorney the names and addresses of persons the prosecutor intends to call as witnesses at trial, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies (Pen. Code, § 1054.1, subd. (a).)

19) Prohibits an attorney from disclosing to a defendant, members of the defendant’s family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to discovery of evidence in a criminal case, unless specifically permitted to do so by the court after a hearing and a showing of good cause. (Pen. Code, § 1054.2, subd. (a)(1).)

20) Allows an attorney to disclose the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant’s case if that disclosure is required for that preparation. (Pen. Code, § 1054.2, subd. (a)(2).)

21) States that except as otherwise required by criminal discovery, or by the United States Constitution or the California Constitution, no law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense. (Pen. Code, § 841.5, subd. (a).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement:** According to the author, "With a statewide rise in crime, California must act to protect both victims and witnesses who want to cooperate with authorities, but fear retaliation. We should give victims and witnesses that are brave enough to report crimes the same protections that victims of sexual assault and domestic violence currently have."

2) **The California Public Records Act:** The CPRA requires every state and local agency to make its records available for public inspection upon request, subject to certain exemptions. The CPRA derives from Article I ("The Declaration of Rights") of the California Constitution and is rooted in the principle that the conduct of government should be subject to public scrutiny. The placement of the right of access to public records in Section 3 of Article I of the state constitution puts it on par with the people's fundamental rights of assembly and petition. Because of the obviously high value placed on access to public records, the California Constitution expressly requires that the right of access in the CPRA be broadly construed, and that any limitation on this access be "narrowly construed." (Article I Section 3(b)(2).) In addition, the state constitution requires that any limitation on access to public records be supported "with findings demonstrating the interest protected by the limitation and the need for protecting that interest." (Id.)

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure.

(http://ag.ca.gov/publications/summary_public_records_act.pdf)

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on recognition of the individual’s right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government’s need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda).

If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney’s fees.

3) **Standards and Procedures for the Disclosure of Information from a Law Enforcement Investigatory Record:** Police reports involving gang-related offenses are investigative records. Under the CPRA, investigatory records are exempt from disclosure at the discretion of the agency, except as specified. The CPRA generally requires disclosure of the names of all persons involved in a law enforcement agency’s investigation into a crime, including the name of all victims, witnesses and alleged perpetrators or arrestees. There is an exception to this general rule if "the disclosure would endanger the safety of a witness or other person
involved in the investigation.” (Gov. Code Section 6254 subd. (f).) There is an additional exception when the incident involves specified crimes like sexual assault, rape, human trafficking, domestic violence, prostitution, injury to or molestation of a child, and stalking. (Gov. Code Section 6254 subs. (f)(2) and (3).) In those cases, there is a presumption that the victim’s name should not be disclosed under the CPRA unless the victim or their guardian consents to disclosure of their name.

The potential for retribution in a gang-related incident arguably justifies extending additional confidentiality protections to a victim or witness of such incidents as a person may only be safe providing information to law enforcement if they do so anonymously. This bill would require a law enforcement agent who personally receives a report alleging the commission of a gang-related offense from a victim or witness to inform that person that their name will be made public unless the agency determines that release of the person’s name would endanger that person’s safety. A written report of the encounter shall memorialize that this conversation occurred and that a victim or witness was informed of their rights. The written report must also include any articulable concern presented by the victim or witness to support the conclusion that disclosure of that person’s name would endanger the victim or witness. This information shall be considered by the agency in determining whether disclosure of a person’s name is required if the agency receives a CPRA request for information related to that incident. The agency is the ultimate decision-maker with respect to what should be disclosed under the CPRA. (Gov. Code Section 6253.3.)

To avoid the specious withholding of information, this bill would require an officer to create a record of any articulable concern provided by a victim or witness which supports the conclusion that disclosure of that person’s name would endanger their safety. A purely speculative statement regarding vague safety concerns would be insufficient to meet this burden. The standard in this bill is consistent with the standard that agencies apply when determining whether to withhold a police officer’s name from the public. (Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59 [“Vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure of officer names. As we have said in the past, ‘[a] mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access to ... records.’”] citing CBS, Inc. v. Block (1986) 42 Cal.3d 646, 652.]) Nothing limits the agency from making the determination that disclosure would endanger a witness or victim, or otherwise endanger the successful completion of the investigation, absent articulable facts provided by a victim or witness.

4) **Argument in Support:** None.

5) **Argument in Opposition:** According to the California Public Defenders Association, “Under existing law, certain categories of information are exceptions to the general rule of disclosure pursuant to the California Public Records Act (‘CPRA.’) Existing law requires that some information related to victims of specified crimes may be withheld from a CPRA Request.

“AB 941 would expand the categories of information that a law enforcement agency may withhold from a CPRA request. AB 941 would also allow a law enforcement agency to consider a request by the alleged victims of certain crimes before determining whether to disclose such information.
“As public defenders, we have been frustrated by law enforcement agencies that choose to withhold relevant information in response to our CPRA requests regarding police investigations. We are also concerned for the potential for abuse with this bill, as it would allow law enforcement agencies to defer too much to the whims of alleged victims in determining whether to release relevant information in response to a CPRA request.

“AB 941 is bad public policy: we support efforts for more openness and transparency in police investigations, not the broadening of categories and circumstances for withholding such information, particularly when related to sensitive police investigations.”

6) Related Legislation: AB 54 (Ting), would clarify the timing requirements under the CPRA for mandated disclosure of any video or audio footage of a critical incident, as defined. AB 54 is currently pending on the Assembly Floor.

7) Prior Legislation: AB 2013 (Cunningham), of the 2017-2018 Legislative Session would have prohibited law enforcement agencies, upon request, from disclosing the names of victims of, and witnesses to, specified gang-related offenses. AB 2013 died in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California

Opposition

California Public Defenders Association

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

AB 959 (Melendez) – As Introduced February 21, 2019

SUMMARY: Requires the Office of Emergency Services (CalOES) to allocate funds for the purposes of establishing the Human Trafficking Prevention Vertical Prosecution Program. Specifically, this bill:

1) Requires CalOES to allocate and award funds to up to 11 district attorney offices that employ a vertical prosecution methodology for the prosecution of human trafficking crimes.

2) Requires each county selected for funding meet all of the following minimum requirements:
   a) Employ a vertical prosecution methodology for human trafficking crimes;
   b) Require that a county selected for funding dedicate at least one-half of the time of one deputy district attorney and one-half of the time of one district attorney investigator solely to the investigation and prosecution of human trafficking crime;
   c) Provide CalOES with annual data on the number of human trafficking cases filed by that county, the number of human trafficking convictions obtained, and the sentences imposed for those convicted of human trafficking in that county;
   d) Enter into an agreement, either by contract or by a memorandum of understanding, with an advocacy agency funded by CalOES that provides services, counseling, or both, to victims of human trafficking in order to ensure that victims and witnesses of human trafficking, as appropriate, receive services; and,
   e) Funding received by district attorney offices pursuant to this program shall be used to supplement, and not supplant, existing financial resources.

3) Requires CalOES, on or before January 1, 2022, to submit to the Legislature and the Governor’s Office a report that describes the counties that received funding pursuant to this program, the number of prosecutions for human trafficking cases filed by the counties receiving funding, the number of human trafficking convictions obtained by those counties, and the sentences imposed for human trafficking crimes in those counties.

4) Provides that not more than 10 percent of the funds appropriated for the program shall be retained by the office for administrative costs including technical assistance, training, and the cost of producing the report to the Legislature.
5) States that this chapter shall be operative only to the extent that funding is provided by express reference in the annual Budget Act or another statute for the purposes of this chapter.

6) Sunsets the provisions of this bill on January 1, 2024.

EXISTING LAW:

1) Establishes the CalOES by the Governor's Reorganization Plan No.2, operative July 1, 2013. (AB 1317 (Frazier), Chapter 352, Statutes of 2013.)

2) States that the CalOES exists within the Governor's office. (Gov. Code, § 8585, subd. (a).)

3) States that the CalOES shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property. (Gov. Code, § 8585, subd. (e).)

4) Specifies that during a state of emergency or a local emergency, the secretary shall coordinate the emergency activities of all state agencies in connection with that emergency, and every state agency and officer shall cooperate with the secretary in rendering all possible assistance in carrying out the provisions of this chapter. (Gov. Code, § 8587, subd. (a).)

5) In addition to the powers designated in this section, the Governor may delegate any of the powers vested in him or her under this chapter to the secretary except the power to make, amend, and rescind orders and regulations, and the power to proclaim a state of emergency. (Gov. Code, § 8587, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "Increasing funding to supplement current vertical prosecution programs in California will provide valuable resources to these programs and help further efforts to prosecute and convict human traffickers. Providing this support to vertical prosecution is one of the single most effective ways to get perpetrators behind bars for the crime of human trafficking, rather than pleading down to pimping or a lesser crime. Vertical prosecution is also a victim focused approach to combating human trafficking, and will provide justice for these victims.

2) Argument in Support: According to the California Catholic Conference "This bill would create a grant program through CalOES to provide counties with additional funding to employ vertical prosecutors in human trafficking cases.

"Vertical prosecuting teams are most effective when prosecuting human trafficking. The units generally involve one or more staff attorneys who handle a specific case, rather than different attorneys handling different stage of the proceeding. This means that a victim, who is already facing a difficult and emotional process, does not have to develop a new relationship with a new prosecutor at each stage of the case."
3) **Argument in Opposition:** California Attorneys for Criminal Justice state, "While we agree that preventing human trafficking to be a noble goal, we believe funding should also go to public defenders. Public defender offices are notoriously underfunded, and caseloads are unacceptably high. If these funds will go to the prosecutors in district attorney offices, then public defenders who provide a constitutionally mandated right to counsel for the indigent, should also receive supplemental funding for these cases to prevent convictions of the innocent.”

4) **Prior Legislation:**

   a) **AB 229 (Baker),** of the 2017-2018 Legislative Session, would have established the Human Trafficking Prevention Vertical Prosecution Program, and appropriated $2,600,000 from the General Fund for that purpose, AB 229. AB 229 was held on the Senate Appropriations Committee suspense file.

   b) **AB 2124 (Rubio),** of the 2017-2018 Legislative Session, established the Human Trafficking Prevention Vertical Prosecution Program, and was identical to this bill in that it would only have become operative to the extent that funds were provided in the Budget Act. AB 2124 was held on the Senate Appropriations Committee suspense file.

   c) **AB 2202 (Baker),** of the 2015-2016 Legislative Session, would have established the Human Trafficking Prevention Vertical Prosecution Program. AB 2202 was held on Assembly Appropriations Committee suspense file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California District Attorneys Association  
California Catholic Conference  
Crime Victims United of California  
Riverside Sheriffs' Association

**Opposition**

California Attorneys for Criminal Justice

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Establishes a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). Specifically, this bill:

1) Specifies that on or before July 1, 2020, the Department of Justice (DOJ) shall review the records in the state summary criminal history information database and shall identify past felony convictions that are potentially eligible for resentencing as misdemeanors under Proposition 47 (2014).

2) Requires DOJ to notify the district attorney and the court of all cases in that jurisdiction that are potentially eligible for resentencing.

3) States that the district attorney shall have until November 4, 2022, to review the cases for which the district attorney is notified and determine whether the conviction meets the criteria resentencing as a misdemeanor pursuant to Prop. 47.

4) Requires the district attorney to do both of the following, on or before November 4, 2022:
   
a) Inform the court of which convictions meet the criteria established by Prop. 47 for resentencing; and

b) Inform the court and the public defender of which convictions do not meet the criteria established by Prop. 47 for resentencing.

5) Requires the public defender, upon receiving notice from the district attorney, to make a reasonable effort to notify the person that the conviction has been deemed by the district attorney to not meet the criteria for resentencing under Prop. 47.

6) States that unless the district attorney notifies the court that a conviction does not meet the criteria for resentencing by November 4, 2022, the court shall recall the sentence and resentenced the person on a misdemeanor.

7) Requires the court to notify the DOJ of the resentencing and the DOJ shall modify the criminal history information database accordingly.

8) Requires DOJ to post general information on its internet website about the resentencing process required by this bill.
9) States that it is the intent of the Legislature that persons who proactively petition for a resentencing pursuant to Prop. 47 be prioritized for review over persons being automatically assessed pursuant to this bill.

EXISTING LAW:

1) Specifies that a person who, on November 5, 2014, was serving a sentence for a felony would have been guilty of a misdemeanor under Proposition 47 (2014) had Proposition 47 been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing on the crimes that were the subject of the proposition. (Pen. Code, 1170.18, subd. (a).)

2) States that if a court receives a petition, the court shall determine whether the petitioner satisfies the criteria recall of sentencing. If the petitioner satisfies the criteria, the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following: (Pen. Code, 1170.18, subd. (b).)

   a) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;

   b) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and

   c) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

3) Provides that a person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony who would have been guilty of a misdemeanor under Proposition 47 had the proposition been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction designated as misdemeanors. (Pen. Code, 1170.18, subd. (f).)

4) States that if the application satisfies the criteria described above, the court shall designate the felony offense as a misdemeanor. (Pen. Code, 1170.18, subd. (g).)

5) Specifies that unless the applicant requests a hearing, a hearing is not necessary to grant or deny an application to reduce a felony to a misdemeanor. (Pen. Code, 1170.18, subd. (d).)

6) Specifies that the provisions of Proposition 47 pertaining to recall of sentence or redesignation of conviction do not apply to a person who has one or more prior convictions for any specified "super strikes" or for an offense requiring registration as a sex offender. (Pen. Code, 1170.18, subd. (i).)

7) States that except as otherwise specified, a petition or application under this section shall be filed on or before November 4, 2022, or at a later date upon showing of good cause. (Pen. Code, 1170.18, subd. (j).)
8) Provides that a felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except that resentencing shall not permit that person to own, possess, or have in his or her custody or control a firearm. (Pen. Code, 1170.18, subd. (k).)

9) States that if the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application. (Pen. Code, 1170.18, subd. (l).)

10) Specifies that a resentencing hearing ordered under Proposition 47 shall constitute a "post-conviction release proceeding" under the California Constitution (Marsy's Law). (Pen. Code, 1170.18, subd. (o).)

11) States that a victim has a right to reasonable notice of all public proceedings, including delinquency 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. (Cal. Const., Art. I, Sec. 28, subd. (b)(7).)

12) Specifies that 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, post-conviction release decision, or any proceeding in which a right of the victim is at issue. (Cal. Const., Art. I, Sec. 28, subd. (b)(8).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 972 will help thousands of Californians turn a page in their lives by removing barriers to housing or employment. We are furthering the efforts of California voters by creating a simpler pathway to realize these benefits for all those who are eligible. This will be especially helpful to anyone who is unaware these rights under prop 47 exist."

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

Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft valued at $950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders. (http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf)

"One of Proposition 47's primary purposes is to reduce the number of nonviolent offenders
in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.” (Harris v. Superior Court (2016) 1 Cal.5th 984, 992, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) Proposition 47 established a process to allow individuals that were convicted of felonies for the offenses that were the subject of the initiative prior to the effective date of the initiative, to apply to the court for the offenses to be designated as misdemeanors, if their sentence was completed. The proposition specified that the provisions pertaining to redesignation of conviction do not apply to a person who has one or more prior convictions for a specified “super strikes” or for an offense requiring registration as a sex offender. A felony conviction that is recalled and designated as a misdemeanor shall be considered a misdemeanor for all purposes, except that resentencing shall not permit that person to own, possess, or have in his or her custody or control a firearm. Proposition 47 requires that an application to redesignate a felony as a misdemeanor must be filed before November 4, 2022, or at a later date upon showing of good cause.

This bill would establish an automatic process to redesignate eligible offenses as misdemeanors. This bill would also establish a time line for the automatic process to redesignate an eligible offense that is consistent with the November 4, 2022 deadline for redesignation established by the proposition.

3) **AB 1793 (Bonta), Chapter 993, Statutes of 2018, Requires the Court to Automatically Resentence, Redesignate, or Dismiss Cannabis-Related Convictions:** AB 1793 requires the DOJ, before July 1, 2019, to review the records in the criminal history information database and to identify past cannabis convictions that are potentially eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation pursuant to Proposition 64 (Adult Use of Marijuana Act). DOJ is required to notify the prosecution of all cannabis cases in their jurisdiction that are eligible for recall or dismissal of a sentence, dismissal and sealing, or redesignation. AB 1793 requires the prosecution to, on or before July 1, 2020, review all cases and determine whether to challenge the resentencing, dismissal and sealing, or redesignation. AB 1793 allows the prosecution to challenge the resentencing, dismissal and sealing, or redesignation if the person does not meet the eligibility requirements or presents an unreasonable risk to public safety. AB 1793 requires the prosecution to notify the public defender and the court when they are challenging a particular resentencing, dismissal and sealing, or redesignation, and would require the prosecution to notify the court if they are not challenging a particular resentencing, dismissal and sealing, or redesignation. Requires the court to automatically reduce or dismiss the conviction pursuant to AUMA if there is no challenge by July 1, 2020.

This bill would establish a similar process for the review of felony convictions that are eligible for redesignation as misdemeanors, under the provisions of Proposition 47.

4) **California Constitutional Limitations on Amending a Voter Initiative:** Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature’s amendatory powers. (People v. Superior Court (Pearson) (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, “The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal
without their approval.” (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

The purpose of California’s constitutional limitation on the Legislature’s power to amend initiative statutes is to protect the people’s initiative powers by precluding the Legislature from undoing what the people have done, without the electorate’s consent. Courts have a duty to jealously guard the people’s initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (Proposition 103 Enforcement Project v. Quackenbush (1998) 64 Cal.App.4th 1473.)

As to the Legislature’s authority to amend the initiative, Proposition 47 states: “This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act.” (http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47)

This bill would provide for automatic review of cases that are potentially eligible to resentencing under Prop. 47. Making the resentencing process more accessible seems to be consistent with, and further the intent of Proposition 47.

5) DOJ Will Not Necessarily Be Able To Identify All Offenses Eligible For Redesignation On the Basis of the Records In Their System: Certain felony convictions that Proposition 47 classified as misdemeanors will be identifiable as eligible for redesignation based simply on the code section for which the defendant was convicted. Felony offenses for simple possession of drugs can be easily identified on the basis of the code of conviction as being eligible for redesignation. Felony offenses for petty theft with a prior is can also be easily identified. Other felony convictions eligible for relief under Proposition 47, will not be identified as eligible for redesignation by a simply looking at the code section of conviction. For example, a felony conviction for commercial burglary, is potentially eligible for reduction under Proposition 47, if the conviction was based on a shoplifting. A felony conviction for commercial burglary would not be eligible for a reduction would not be eligible if the conviction was for entry in a commercial establishment with the intent to commit another felony, or an auto burglary. Other theft offenses would not be identifiable as eligible for Proposition 47 relief based on their code section, without the amount of the loss involved.

This bill would require DOJ to send district attorneys and courts information on felony convictions that are potentially eligible for redesignation. Many of those offenses will be eligible for redesignation based on the code section that is the basis of the conviction. However, other felony convictions will require a review of court records or the district attorney’s files to see if the factual basis of the offense would make it a misdemeanor under Proposition 47. Such review will take resources and the courts are continuing to define certain factual situations that are legally eligible for relief. However, that same review would be required under existing law for each petition for redesignation which is individually filed with the court that involves a conviction of a crime that is potentially eligible for
redesignation, but requires some factual review to make the determination of eligibility. This bill does not have any limitation for how far back in time convictions must be reviewed, which will also increase pressure on resources.

6) **California Constitution, Article I, Section 28 (Marsy’s Law):** Marsy’s Law was enacted in 2008 when the voters passed Proposition 9. Marsy’s Law codified a number of victims’ rights in the California Constitution.

Included in the provisions of Marsy’s law are the following two rights:

A victim has a right to reasonable notice of all public proceedings, including delinquency 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. (Cal. Const., Art. I, Sec. 28, subd. (b)(7).)

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, post-conviction release decision, or any proceeding in which a right of the victim is at issue. (Cal. Const., Art. I, Sec. 28, subd. (b)(8).)

The procedures this bill seeks to establish do not seem to implicate any proceedings that would trigger a right to notice or to be heard with the possible exception of “sentencing.” The victim does have a right, upon request, to be heard at any sentencing and the language of this bill refers to resentencing. However, the process authorized by Proposition 47, which this bill seeks to streamline, is a “designation” of a felony as a misdemeanor. Proposition 47 draws a distinction between “resentencing” and “designating.” Proposition 47 allows resentencing for individuals that have not completed their sentence to be “resentenced.” The process for resentencing involves a determination of dangerousness. A person that has completed their sentence on a Prop. 47 offense is authorized to have their conviction designated as a misdemeanor. That process does not involve any determination as to dangerousness. Proposition 47 specified that resentencing hearing ordered under Proposition 47 shall constitute a “post-conviction release proceeding” under the California Constitution (Marsy’s Law). (Pen. Code, 1170.18, subd. (o).) Proposition 47 did not include similar language regarding the process for redesignation.

The redesignation of felony offense to a misdemeanor under Proposition 47 is governed by facts that are independent of the victim. It is a determination that does not seem to implicate rights of a victim. The process serves to make a purely legal determination as to whether or not the felony conviction would have been a misdemeanor had it been committed at the time Proposition 47 was in effect. In addition, the process under Proposition 47 for designating a felony as a misdemeanor specifically contemplated that a hearing was not required. (Pen. Code, 1170.18, subd. (h).)

7) **Argument in Support:** According to Californians for Safety and Justice, “A criminal conviction exposes individuals to thousands of collateral consequences that will follow them long after the successful completion of their sentence. These collateral consequences serve as substantial, lifelong barriers to stability and safety for the 8 million Californians who are living with a criminal record. The Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions found that 76 percent of individuals with a
criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues.

"Four years ago, California voters passed Proposition 47, the Safe Neighborhoods and Schools Act, an unprecedented criminal justice reform measure that reduces incarceration and reallocates prison spending to prevention and treatment. Proposition 47 changed six nonviolent, low-level crimes from felonies to misdemeanors, authorized the removal of felony records for Californians with old felony convictions for these crimes, and required the state to reallocate the prison costs saved from the measure to local programs. Since it passed, Prop 47 has resulted in decreased incarceration, innovative new public safety approaches from local law enforcement, and over $100 million in reinvested funds to support treatment, schools, and crime victim services across the state.

"This legislation will, over the next four years, ensure that everyone eligible for record change for one of these six non-violent, low-level offenses will receive this critical relief. Building on the success of AB 1793, this legislation would establish a similar process to automate and accelerate the record change provisions already established in Prop 47. Like AB 1793, this legislation makes no changes to eligibility provisions; it simply ensures that people are able to reach the relief already available to them.

"We estimate that automating and accelerating this relief will deliver record change to hundreds of thousands, if not close to or over 1,000,000 Californians with felony records for offenses that are misdemeanors today."

8) **Argument in Opposition:** According to the *California District Attorneys Association*, "This bill would require all California District Attorneys to review all cases of defendants potentially eligible for resentencing pursuant to Penal Code section 1170.18 (the resentencing provision of Proposition 47) before November 4, 2022. The review would be to determine whether these convictions meet the criteria for recall and resentencing under Proposition 47 (specifically, Penal Code section 1170.18(f).)

"The District Attorney would also have to notify the court which convictions meet the criteria for recall and resentencing and inform the court and the public defender of which convictions do not meet that criteria. The public defender would be required to make reasonable efforts to notify the person that the conviction has been deemed by the district attorney to not meet the criteria for resentencing under Section 1170.18. If the district attorney does not notify the court that a conviction does not meet the criteria, the court must recall the sentence and resentencing the person.

"While CDAA has no objections to the mandates of Proposition 47 being fulfilled, this bill places District Attorneys in an untenable position for the reasons outlined below.

"Initially, it must be noted that the bill imposes new and potentially onerous and time-consuming levels of service on local prosecutor’s offices without allocating specific funds in the budget for the increase. While this bill includes generic language regarding reimbursement for costs mandated by the state, the circumstances set in play by the bill are such that these funds may not be forthcoming.

"Additionally, legislatively imposing a mandate on prosecutors to utilize and prioritize office
resources to review convictions for recall and resentencing absent a defense petition arguably violates the separation of powers doctrine embodied in section 3 of article III of the California Constitution. A law which essentially requires the executive branch to allocate resources to facilitate vacating of convictions without any request by the defendant appears to impinge upon one of the core discretionary functions of the district attorney, i.e., the executive branch.

"Third, requiring the district attorney to review prior convictions and inform the courts and the public defenders which convictions do or do not meet the criteria for resentencing under Proposition 47 arguably requires prosecutors to violate Business and Professions Code section 6131, which makes it a misdemeanor (and requires disbarment) if an attorney "directly or indirectly advises in relation to, or aids, or promotes the defense of any action or proceeding in any court the prosecution of which is carried on, aided or promoted by any person as district attorney or other public prosecutor with whom such person is directly or indirectly connected as a partner" or "having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to or takes any part in the defense thereof, as attorney or otherwise . . .." (Bus. & Prof. Code, § 6131(a)&(b), emphasis added.)

"Fourth, to the extent the failure of the district attorney to review the petition would allow for automatic reduction of the conviction without notification to the victims of the crimes being reduced or resentenced, it would violate the notice and right to be heard provisions of Marsy’s Law. (See Cal. Const., art. I, § 28(b)(7)&(8).)"

9) Related Legislation:

a) AB 1076 (Ting), would require the court to automatically expunge a conviction after a defendant has completed probation and fully complied with the sentence of the court. AB 1076 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 1271 (Jones-Sawyer), would delete the requirement that persons convicted of specified drug offenses register with local law enforcement. AB 1271 is awaiting hearing in the Assembly Public Safety Committee.

10) Prior Legislation:

a) AB 2599 (Holden), Chapter 653, Statutes of 2018, requires law enforcement agencies and probation departments to increase awareness and access to the arrest record sealing and expungement process.

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

c) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.
d) AB 813 (Gonzalez Fletcher) Chapter 739, Statutes of 2016 created a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.

e) SB 124 (Lara), Chapter 789, Statutes of 2016, authorizes a person who was sentenced to a term of one year prior to January 1, 2015, to submit an application to the trial court to have the term of the sentence reduced to the maximum term of 364 days.

REGISTERED SUPPORT / OPPOSITION:

Support

California for Safety and Justice (Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
A New Way of Life Re-Entry Project
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association (CPDA)
Center on Juvenile and Criminal Justice
Drug Policy Alliance

Oppose

California District Attorneys Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Makes it a crime for a person to possess a firearm pending a hearing regarding a firearm seized under specified circumstances, and would prohibit the person from possessing a firearm for a period of five years if the court determines that the return of the firearm would likely endanger the person or others. Specifically, this bill:

1) States that pending a hearing regarding the seizure of a firearm or deadly weapon, as specified, when the person was detained by an officer to investigate whether person qualifies for a 72-hour mental health hold, the person shall not have in their possession or under their control, or purchase or receive, a firearm or other deadly weapon.

2) Specifies that if, after a hearing, the court determines that the return of the firearm or other deadly weapon would likely endanger the person or others, the person shall not have in their possession or under their control, or purchase or receive, a firearm or other deadly weapon for a period of five years.

3) States that a person who owns or possesses or has under their custody or control, or purchases or receives, or attempts to purchase or receive, a firearm or other deadly weapon in violation of the provisions of this bill shall be punished as a felony, by imprisonment up to three years in the county jail, or as misdemeanor, by imprisonment in a county jail for not more than one year.

EXISTING FEDERAL LAW: Prohibits firearm possession for an individual who has been adjudicated as a mental defective or who has been committed to a mental institution. (18 USC 922, subd. (g)(4).)

EXISTING LAW:

1) States that when any person, as a result of mental disorder, is a danger to others, or to himself or herself ... a peace officer ... may, upon probable cause, take or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved the State Department of Mental Health as a facility for 72-hour treatment and evaluation. (Welf. and Inst. Code, § 5150, subd. (a).)

2) Specifies that prior to admitting a person to the facility for 72-hour treatment and evaluation, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention. (Welf. and Inst. Code, § 5151.)
3) States that whenever a person, who has been detained examination of his or her mental
condition or who is a person that meets certain criteria concerning their mental condition, is
found to own, have in his or her possession or under his or her control, any firearm
whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be
confiscated by any law enforcement agency or peace officer, who shall retain custody of the
firearm or other deadly weapon. (Welf. and Inst. Code, 8102, subd (a).)

4) Provides that upon confiscation of any firearm or other deadly weapon from a person who
has been detained or apprehended for examination of his or her mental condition, the peace
officer or law enforcement agency shall issue a receipt describing the deadly weapon or any
firearm and listing any serial number or other identification on the firearm and shall notify
the person of the procedure for the return, sale, transfer, or destruction of any firearm or other
deadly weapon which has been confiscated. (Welf. and Inst. Code, 8102, subd (b).)

5) States that upon the release of the person, the confiscating law enforcement agency shall
have 30 days to initiate a petition in the superior court for a hearing to determine whether the
return of a firearm or other deadly weapon would be likely to result in endangering the
person or others, and to send a notice advising the person of his or her right to a hearing on
this issue. (Welf. and Inst. Code, 8102, subd (c).)

6) Requires the law enforcement agency to inform the person that he or she has 30 days to
respond to confirm his or her desire for a hearing, and that the failure to respond will result in
a default order forfeiting the confiscated firearm or weapon. (Welf. and Inst. Code, 8102,
subd (e).)

7) Specifies that if, after a hearing, the court determines that the return of the firearm or other
deadly weapon would likely endanger the person or others, the law enforcement agency may
destroy the firearm within 180 days from the date that the court makes that determination,
unless the person contacts the law enforcement agency to facilitate the sale or transfer of the
firearm to a licensed dealer. (Welf. and Inst. Code, 8102, subd (h).)

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

9) Specifies that a person who has been taken into custody on a 72-hour hold because that
person is a danger to himself, herself, or to others, assessed as specified, and admitted to a
designated facility because that person is a danger to himself, herself, or others, one or more
times within a period of one year preceding the most recent admittance, shall not own,
possess, control, receive, or purchase, or attempt to own, possess, control, receive, or
purchase, any firearm for the remainder of his or her life. (Welf. and Inst. Code, 8103, subd
(f)(1(B))).

10) States that a person taken into custody on a 72-hour hold may possess a firearm if the
superior court has found that the people of the State of California have not met their burden
of showing by a preponderance of the evidence that the person would not be likely to use
firearms in a safe and lawful manner. (Welf. and Inst. Code, 8103, subd (f)(1)(C).)

11) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment for up to three years in the county jail, as a realignment felony, or in a county jail for not more than one year, as a misdemeanor. (Welf. and Inst. Code, 8103, subd (i).)

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

13) Allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year. (Pen. Code, § 18170.)

14) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)

15) A temporary emergency gun violence restraining order may be issued on an ex parte basis only if a law enforcement officer asserts, and a judicial officer finds, that there is reasonable cause to believe both of the following: (Pen. Code, § 18125, subd. (a)(1)-(2).)

a) The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

b) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject of the petition.

FISCAL EFFECT: Unknown

COMMENTS:
1) **Author's Statement**: According to the author, "People at risk of harming themselves or others should not have easy access to firearms. AB 997 tightens our laws to keep firearms out of the hands of people who have had their guns taken away. Restricting their access to firearms could save lives."

2) **The Lanterman-Petris-Short Act (LPS Act)**: The LPS Act governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program.

(Conservatorship of Susan T. (1994) 8 Cal.4th 1005, 1008-1009.)

(www.sdap.org/downloads/research/criminal/mh.doc)

The LPS Act limits involuntary commitment to successive periods of increasingly longer duration, beginning with a 72-hour detention for evaluation and treatment (Welf. & Inst. Code, § 5150), which may be extended by certification for 14 days of intensive treatment (Welf. & Inst. Code, § 5250); that initial period may be extended for an additional 14 days if the person detained is suicidal. (Welf. & Inst. Code, § 5260.) In those counties that have elected to do so, the 14-day certification may be extended for an additional 30-day period for further intensive treatment. (Welf. & Inst. Code, § 5270.15.) Persons found to be imminently dangerous may be involuntarily committed for up to 180 days beyond the 14-day period. (Welf. & Inst. Code, § 5300.) After the initial 72-hour detention, the 14-day and 30-day commitments each require a certification hearing before an appointed hearing officer to determine probable cause for confinement unless the detainee has filed a petition for the writ of habeas corpus. (Welf. & Inst. Code, §§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.) A 180-day commitment requires a superior court order. (Welf. & Inst. Code, § 5301.) (Id.)

3) **Existing Law on Welfare & Institutions (W&I) Code 5150 (72-hour hold) and Firearm Prohibition**: Current law states that a person who has been taken into custody on a 72-hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. (Welfare and Inst. Code, 8103, subd. (f)(1).)

The facility is required to inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. Upon filing of the petition, the court is required to set the hearing within 30 days of receipt of the request for a hearing.

Current law provides that a person subject to a 72-hour hold may make a single request for a hearing regarding their right to possess a firearm at any time during the five-year period. (Welf. and Inst. Code, § 8103, subd. (f)(4).) Current law allows a person subject to a 72-hour hold to restore their right to possess a firearm if the superior court has found that the prosecution has not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. and Inst.)
Current law also mandates a lifetime firearm prohibition for individuals that have more than one W&I 5150s (72-hour hold) within a one year time period. An individual subject to a lifetime firearm prohibition is entitled to a hearing. The prosecution would bear the burden to demonstrate that the individual showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. If a court upholds the lifetime firearm prohibition, the person would be entitled to subsequent petitions, but no sooner than five years from the date of the last petition. At any subsequent petition the person would bear the burden to establish that they were likely to use firearms in a safe and lawful manner.

A person that is detained by a police officer, taken to a psychiatric facility, evaluated by a mental health professional, and not admitted to the facility for a 72-hour hold because the mental health professional does not find the person to be a danger to themselves, danger to others, or gravely disabled, is not prohibited from possessing a firearm.

4) **Due Process Concerns:** Based on discussions with representatives of Santa Clara County, the situation this bill is seeking address the following situation: (1) A person was detained by law enforcement for a 5150 evaluation; (2) during that detention, a firearm or weapon was seized; (3) the person was taken to a psychiatric facility and evaluated by a mental health professional; (4) the mental health professional evaluated the person and determined they were not a danger to themselves or others, and was not gravely disabled; and (5) on the basis of that evaluation, the person was not admitted to the facility as a 5150 for a 72 hour hold. Because the person was not found to be 5150, no five year firearm prohibition was triggered.

Current law authorizes seizure of a firearm or other deadly weapon by a peace officer when an officer detains a person in order for them to be evaluated as 5150. Current law allows the law enforcement agency that seized the firearm or weapon to petition the court for a hearing on whether the return of the weapon would be likely to result in endangering the person or others. If law enforcement petitions for a hearing, law enforcement sends the notice to the person of the proceedings. If the person responds and requests a hearing, the court will set a hearing no later than 30 days from the receipt of the request. If the person does not respond within 30 days of the notice, the law enforcement agency may file a petition for order of default, allowing the law enforcement agency to destroy the firearm 180 days from the date the court enters default.

This bill would authorize a 5 year weapon prohibition upon a court finding if a weapon was seized and law enforcement files a petition for hearing, even if the person was not found to qualify as 5150. This bill would also impose a firearm/weapon prohibition on an individual pending a court hearing. Possession of a weapon under the circumstances described by this bill would be a crime.

It is not clear how the mechanics of this bill concerning a weapon prohibition would interact with the procedure under current law regarding seizure and forfeiture of a weapon and raises concerns about due process.
The language of this bill specifies that, "If, after a hearing, the court determines that the return of the firearm of other deadly weapon would likely endanger the person or others, the person shall not have in their possession or under their control, or purchase or receive, a firearm or other deadly weapon for a period of five years. This bill further states, "Pending the hearing specified in subdivision (c) (petition for hearing by law enforcement), the person shall not have in their possession or under their control or purchase or receive, a firearm or other deadly weapon.”

It is not clear what happens under the provisions of this bill if a person fails to request a hearing, upon a petition for hearing by the law enforcement agency. Is a hearing deemed to be “pending” because law enforcement requested a hearing, even though the person didn’t respond within 30 days and request a hearing themselves? If a hearing is “pending” on petition by law enforcement and the person does not request a hearing, the person would be prohibited from owning a firearm until a hearing was conducted. Under those circumstances, it is not clear that a hearing would ever be held. If the person did not request a hearing, would the court conduct an evidentiary hearing anyways, without the presence of the person to be prohibited? If the law enforcement agency petitioned for a hearing and the person did not request a hearing, would the default judgment allowed under current law for destruction of the firearm, allow the court to enter a default judgment regarding dangerousness? If the person does not request a hearing, would the court be precluded from making a finding of dangerousness?

It also is not clear how an individual would be provided notice that they are prohibited from possessing a firearm or deadly weapon. Notice of firearm prohibitions under current law is effectuated by personal service, not by mail. Notice is critical for due process. Unless an individual is provided adequate notice, they should not be exposed to consequences for failing to comply with a directive. Under this bill, the officer that initially detained the person and confiscated the weapon would not be able to provide personal service. The prohibition is based on a pending hearing. The process regarding a hearing isn’t initiated until the confiscating law enforcement agency initiates a petition in the superior court for a hearing. Current law anticipates that the law enforcement agency shall “send” a notice to inform the person that they have 30 days to respond to confirm the person’s desire for a hearing, and that failure to respond will result in a default order forfeiting the weapon. It is anticipated that law enforcement will use the address provided to the officer at the time of the person’s detention. It is not clear how this bill would ensure personal service of the prohibition pending a hearing. Nor is it clear if the prohibition would, or could be enforced if the person is not provided with personal notice.

Current law provides that if the weapon owner doesn’t request a hearing, the law enforcement agency can file a petition for default judgment after the law enforcement agency has filed a petition for hearing. It is unclear whether the default procedure could also apply to a finding of dangerousness and result in a five year prohibition. Using a default procedure for a prohibition on firearm possession would likely not meet constitutional due process requirements.

In City of San Diego v. Kevin B., 118 Cal.App.4th 933, the Fourth District Appellate Court discussed the significance of confiscating weapons under the statute that this bill seeks to amend, based on a judicial finding that the person is a danger to themselves or others in the absence of an evaluation by trained mental health professionals. In that case, police
responded to a domestic disturbance in which parents reported that their son was enraged and had committed acts of vandalism in the home. The police seized two firearms that belonged to the son. The son was never detained, evaluated, and admitted pursuant to 5150. The police initiated a seizure petition under the law which this bill seeks to amend. The trial court sustained the petition and ordered the firearms destroyed. The Appellate Court found that the trial court erred in granting the petition and reversed the order. In conducting its analysis, the Appellate Court stated:

“On a practical level, unless the power to confiscate and forfeit weapons is closely tethered to the assessment and evaluation required by section 5151 and 5152, a risk arises that weapons will be taken from law-abiding citizens who in fact are not a danger to themselves or others. Absent assessment and evaluation by trained mental health professionals, the seizure and loss of weapons would depend solely on the necessarily subjective conclusion of law enforcement officers who may or may not have the mental health training and experience otherwise available at a designated mental health facility within the meaning of section 5150.” (Id. at 942.)

5) **This Bill Does Not Treat Similarly Situated Persons Equally:** The provisions of this bill would not be triggered unless a firearm or deadly weapon is confiscated at the time the person is detained. If the person does not own a firearm or deadly weapon, or if no weapon is confiscated, nothing would trigger a hearing and potential five year prohibition, even though such a person would be similarly situated in terms of their potential dangerousness for purchasing or possessing a firearm.

6) **Current Law Allows Law Enforcement to Seek Gun Violence Restraining Orders (GVROs):** To the extent that law enforcement believes an individual should be prohibited from possessing a firearm and a mental health professional has declined to find the person was a danger to themselves or others under 5150, law enforcement can seek an emergency GVRO from the court. The process to obtain an emergency GVRO is designed to address situations where the danger is current. An application for an emergency GVRO can be made orally and processed immediately. Current law also allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one year. (Pen. Code, § 18170.) A law enforcement officer could seek a GVRO (either emergency or with notice) if the person was not found by a mental health professional to qualify under 5150, but the officer felt that circumstances were appropriate to pursue such an order. The use of GVROs also maintains consistency and due process protections in a way that this bill does not.

7) **Argument in Support:** According to County of Santa Clara, “Current statute requires law enforcement to confiscate any firearms or other deadly weapons belonging to a person who has been detained or apprehended for examination of his or her mental state. Upon the release of a person, the confiscating law enforcement agency has 30 days to initiate a court petition for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others and to send a notice advising the person of his or her right to a hearing on the issue. If, after a hearing, the court determines that the return of the firearm other deadly weapon would likely endanger the person or others, the law enforcement agency may destroy or dispose of the firearm within 180 days.
from the date that the court makes its determination or retain and use it as allowed by statute, unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer. However, an individual who has had a firearm or other deadly weapon taken away retains the rig to purchase firearms to replace the one(s) that were removed from them.

“AB 997 would prohibit an individual who the court finds is likely to endanger themselves or others from possessing, purchasing, or receiving a firearm or other deadly weapon for a period of five years. By eliminating the ability of a person found to be a safety risk to purchase replacement firearms, this bill will provide for the safety of the individuals and others.”

8) Argument in Opposition: According to the California Public Defenders Association, “Under current law, Welfare and Institutions Code (WIC) section 8102, law enforcement may confiscate any firearm or deadly weapon in the possession or control of an individual who has been detained for psychiatric evaluation. Additionally, WIC section 8100 provides that while an individual is undergoing inpatient psychiatric hospitalization or who has been reported by a licensed psychotherapist to law enforcement as having made a threat of violence against identifiable individual(s) is barred from possession of firearms or deadly weapons for 5 years from the date the threat is reported. An individual who possesses or attempts to purchase a firearm or any deadly weapon in violation of the prohibition can be punished either as a misdemeanor or a felony. (WIC section 8100(g).) However, an individual who has been discharged from the inpatient psychiatric facility is not barred from possessing firearms or dangerous weapons. (WIC section 8100(a) “A person is not subject to the prohibition in this subdivision after he or she is discharged from the facility.”)

“AB 997 would bar possession or ownership of a firearm or weapon after the individual has been released from inpatient treatment and before law enforcement has even initiated a petition seeking a finding that the individual is dangerous. This is inconsistent with existing law. Moreover, making an individual subject to felony prosecution before there has been any finding of dangerousness is not fair or just.

“Although the goal of preventing gun violence is laudable, an individual suffering from mental illness who has not been convicted of any offense, should not be subject to prosecution without notice and some finding that the person is a danger to self or others. AB 997 as currently written stigmatizes individuals suffering from mental illness.”

9) Related Legislation:

a) AB 12 (Irwin), would change the duration of the gun violence restraining order and the renewal of the gun violence restraining order from one year to a period of time between one to 5 years, subject to earlier termination or renewal by the court. The bill would require a court, in determining the duration of the gun violence restraining order, to consider the length of time that the threat of personal injury is likely to continue, and to issue the order based on that determination. AB 12 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 61 (Ting), would authorize an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last six months to file a
petition for an ex parte, one-year, or renewed GVRO. AB 61 failed passage in the Assembly Public Safety Committee and is pending hearing for reconsideration.

c) AB 165 (Gabriel), would require the Commission on Peace Officer Standards and Training (POST) to develop and implement a course of training regarding GVROs for peace officers and incorporate it into the course of basic training. AB 165 is pending hearing in the Assembly Appropriations Committee.

d) AB 339 (Irwin), requires each municipal police department, county sheriff’s department, the Department of California Highway Patrol, and the University of California and California State University Police Departments to develop and adopt written policies and standards regarding the use of gun violence restraining orders (GVRO) on or before January 1, 2021. AB 339 is awaiting hearing in the Assembly Appropriations Committee.

e) AB 1121 (Bauer-Kahan), would prohibit a person who is granted this pretrial diversion based on a mental health disorder from owning or possessing a firearm, or other dangerous or deadly weapon, as specified. AB 1121 is awaiting hearing in the Assembly Public Safety Committee.

10) Prior Legislation:

a) AB 1968 (Low), Chapter 861, Statutes of 2018, requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings.

b) SB 755 (Wolk), of the 2013-2014 Legislative Session would have prohibited a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. SB 755 was vetoed by the Governor.

c) AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a gun violence restraining order, as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified.

d) AB 1131 (Skinner), Chapter 747, Statutes of 2013, increased the period of time that a person is prohibited from possessing a firearm based on a mental illness or mental disorder or a serious threat of violence communicated to a licensed psychotherapist.

e) AB 1084 (Melendez), of the 2013-2014 Legislative Session would have increased the penalties to two, three, or four years in the state prison when an individual possesses a gun, who has been prohibited from gun possession because the person has been held for specified mental health findings. AB 1084 failed passage in the Assembly Public Safety
REGISTERED SUPPORT / OPPOSITION:

Support

County of Santa Clara (Sponsor)
California District Attorneys Association
California State Sheriffs' Association
Riverside Sheriffs' Association

Opposition

California Public Defenders Association

Analysis Prepared by:  David Billingsley / PUB. S./ (916) 319-3744
Date of Hearing: March 26, 2019
Chief Counsel: Gregory Pagan

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

AB 1052 (Chu) – As Introduced February 21, 2019

SUMMARY: Requires the basic peace officer course curriculum to include on the topic of hate crimes a specified hate crimes video developed by the Commission on Peace Officer Standards and Training (POST), and requires the development of a peace officer in-service hate crimes refresher course to be taken every three years. Specifically, this bill:

1) Requires POST, commencing on or after June 1, 2020 to incorporate the November 2017 video course entitled “Hate Crimes: Identification and Investigation” or any successor video thereto into the basic course curriculum.

2) Provides that POST make the Hate Crimes: Identification and Investigation video available to stream via the learning portal.

3) Requires each peace officer, on or before January 1, 2021, watch the above Hate Crimes video via the learning portal.

4) Provides that POST shall develop and periodically update an interactive refresher course of instruction and training for in-service peace officers on the topic of hate crimes and make the course and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crimes incidents, and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.

5) POST shall require that the above hate crimes refresher course to be taken by in-service peace officers every three years.

EXISTING LAW:

1) Requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen.Code, § 13519.6, subd. (a).)

2) States that the hate crimes course of instruction shall make the maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

a) Indicators of hate crime;
b) The impact of these crimes on the victim, the victim’s family and the community, and the assistance and compensation available to the victims;

c) Knowledge of laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;

d) Law enforcement procedures, reporting, and documentation of hate crimes;

e) Techniques and methods to handle incidents of hate crimes in a non-combative manner;

f) Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes in whole or in part because of the victim’s actual or perceived homelessness;

g) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab, and anti-Islamic crimes, and techniques and methods to handle these special problems; and,

h) Preparation for, and response to future anti-Arab/middle Eastern and anti-Islamic hate crime waves that the Attorney General determines is likely. (Pen. Code, § 13519.6, subd, (b).)

3) Provides that the guidelines developed by POST shall incorporate certain procedures and techniques, as specified, and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

a) A message from the law enforcement agency’s chief executive officer to the agency’s officers and staff concerning the importance of hate crime laws and the agency’s commitment to enforcement;

b) The definition of “hate crime”, as specified;

c) References to hate crime statutes as specified; and,

d) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

i) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.

ii) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.
iii) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.

iv) Providing victim assistance and follow-up, including community follow-up.

v) Reporting. (Pen. Code § 13519.6, subd. (c).)

4) 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).)

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

6) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "With hate crimes on the rise throughout the state of California, it is imperative that our peace officers take comprehensive trainings and be equipped with the proper tools to identify, report, and respond to hate crimes. Our state prides itself in being diverse and progressive through policies that denounce hate and provide equal protection to all of its residents. AB 1052 will provide resources to help prepare peace officers to address hate crimes and protect the communities they serve.

2) POST Training Requirements: POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).)

According to the POST website, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, Regular Basic Course Training Specifications; <http://post.ca.gov/regular-basic-course-training-specifications.aspx>]. These topics are taught during a minimum of 664 hours of training. [POST, Regular Basic Course, Course Formats, available at: <http://post.ca.gov/regular-basic-course.aspx>.] Over the course of the training, individuals are trained not only on policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes. This requires knowledge of the California Penal code specifically.
3) Need for Revision of Hate Crime Policy: According to data from the National Crime Victim Survey by the U.S. Justice Department, hate crimes are significantly underreported. This survey, in comparison to numbers reported to the FBI, suggests that hate crimes likely occur 24-28 times more than they are reported. This underreporting is due in part to a lack of formal training and reporting requirements for local police departments as well as the victim’s fear of insensitive treatment by law enforcement.


4) Hate Crime Reporting in California: 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. That being said, hate crime events in California have been 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.

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.” Even with the two-tiered system in place, the DOJ still lists the policies of law enforcement agencies as one of four factors possibly influencing the volume of hate crimes reported.

<https://openjustice.doj.ca.gov/resources/publications> [Feb. 9, 2018].

Areas having the greatest concentrations of hate groups—Sacramento, San Francisco Bay, and Los Angeles—the only policy language covering procedures for hate crimes that this Committee was able to locate online, was a General Order (524.04) posted by the Sacramento Police Department (SPD). The General Order details the department’s protocol for identifying and dealing with bias motivated crimes. It also, among other things, defines what a bias motivated crime is, clarifies that a determination of whether the crime was bias motivated need not be made at the scene, orders officers to not argue with the victim if the victim is of the belief that the crime was bias motivated, gives a list of factors to include when assessing possible motivations, requires officers to notify a field supervisor if they believe the crime was bias motivated, and it orders that the station commander be informed before the follow-up investigation is delegated to the Felony Assaults Unit in accordance with the DOJ’s two-tiered analysis mandate. (<https://www.cityofsacramento.org/-/media/Corporate/Files/Policie/Transparency/GO-52404-Bias-Motivated-Crimes.pdf?la=en> [Feb. 9, 2018].)

The Los Angeles Police Department (LAPD) website posted its manual (Volume 1, Section 522), which states its general policy, but does not discuss specific procedures. Among other things, it states, “When any act motivated by hatred or prejudice occurs, the Department will ensure that it is dealt with on a priority basis and use every necessary legal resource to rapidly and decisively identify the suspects and bring them to justice.”

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Defamation League
California Association of Human Relations Organizations
California Immigrant Policy Center
California Women's Law Center
Center for the Study of Hate & Extremism - California State University, San Bernardino
Hindu American Foundation, Inc.
Sikh American Legal Defense and Education Fund

Opposition

None

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