Assembly
California Legislature

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

AGENDA

9:00 a.m. – January 14, 2020
State Capitol, Room 126

REGULAR ORDER OF BUSINESS

Item	Bill No. & Author	Counsel	Summary
1.	AB 503 (Flora)	Mr. Pagan	Gun-free school zone.
2.	AB 665 (Gallagher)	Mr. Billingsley	Parole: youth offender parole hearings.
3.	AB 855 (McCarty)	Mr. Pagan	Department of Justice: law enforcement policies on the use of deadly force.
4.	AB 904 (Chau)	Ms. Moore	Search warrants: tracking devices.
5.	AB 1210 (Low)	Mr. Billingsley	Crimes: package theft.
6.	AB 1450 (Lackey)	Ms. Uribe	Child Abuse Central Index.
7.	AB 1599 (Cunningham)	Mr. Fleming	Peace officers: release of records.
		VOTE ONLY	
8.	AB 401 (Flora)	Mr. Billingsley	Vehicles: driving under the influence.
9.	AB 582 (E. Garcia)	Ms. Uribe	Vehicle accidents: fleeing the scene of an accident.

10.	AB 884 (Melendez)	Mr. Billingsley	Sex offender registration.
11.	AB 1422 (Gipson)	Mr. Fleming	PULLED BY AUTHOR.

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Date of Hearing: January 14, 2020
Chief Counsel: Gregory Pagan

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

AB 503 (Flora) – As Introduced February 13, 2019

SUMMARY: Allows a person that holds a valid license to carry a concealed firearm to carry that firearm to, from, or in a church, synagogue, or other building used as a place of worship on the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, with the written permission of specified school authorities. Specifically, **this bill**:

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

   a) The request for written permission may be denied;

   b) The written permission shall be valid for no longer than one year;

   c) The permission may be revoked at any time; and,

   d) A person is only authorized to carry the firearm on school grounds during the time of worship.

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

   a) The request for written permission may be denied;

   b) The written permission valid shall be valid for no longer than the school authorities specify;

   c) The permission may be revoked at any time; and,

   d) A person is only authorized to carry the firearm on school grounds during the time specified by the school authority.

EXISTING LAW:

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

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

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

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

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

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

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

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

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

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

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

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

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

   f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or

imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months;

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

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

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

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

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

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

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

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

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

a) A duly appointed peace officer;

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

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

d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;

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

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

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

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

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

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

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

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

a) A duly appointed peace officer as defined;

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

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

2) **Argument in Support**: According to the *National Riffle Association of America,* "This bill is about enhancing safety at churches, synagogues, and other religious institutions as well as the right of self-defense for those who attend functions in such facilities. Unfortunately religious institutions are not crime free zones as recent events have exposed the vulnerability of our faith based communities. Currently, religious institutions are being prevented from making safety and security decisions due to the passage of AB 707 (2015) and AB 424 (2017) when a school is associated with the property. This diminishes the ability of religious institutions to provide security teams and prevents congregants who are licensed to carry by the state for protection to protect themselves. These are the very same rights that private citizens, businesses, and other private organizations have on their property."

3) **Arguments in Opposition**:

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

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

   b) According to the *California School Employees Association, AFL-CIO*, "The Gun Free Zone Act of 1995 prohibits any individual from carrying a gun onto a school campus unless that person is a duly-sworn peace officer or armed security guard who completed the appropriate training required by law. Peace officers and armed security guards are trained to operate firearms during emergency situations. However, even among professionals there have been incidents where firearms were accidently discharged or were fired by students that found guns unattended in restrooms or other locations.

   "AB 503 would authorize individuals that have not completed the same training as peace officers and armed security guards to carry a weapon onto campus if approved by the superintendent. According to the American Academy of Pediatrics, 'research shows that easier access to firearms increases the risk that children and youth will be injured or killed by guns; making the concealed carry of firearms easier is a threat to children's

safety.'"

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

REGISTERED SUPPORT / OPPOSITION:

Support

National Rifle Association - Institute for Legislative Action

Oppose

American Academy of Pediatrics, California
Americans Against Gun Violence
Association of California School Administrators
Brady California United Against Gun Violence
California School Employees Association
California Teachers Association
NeverAgainCA

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

Date of Hearing: January 14, 2020
Counsel: David Billingsley

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

AB 665 (Gallagher) – As Amended March 28, 2019

SUMMARY: Prohibits a youthful offender parole hearing for any person that was sentenced to Life Without Parole (LWOP) for a crime committed before they were 18 if the person was found irreparably corrupt or incapable of rehabilitation at the time of sentencing or resentencing. Specifically, **this bill**:

1) Deletes the authority of a defendant who was under 18 years of age at the time of the commission of the offense to petition for a recall of the sentence and would instead require the court to provide that defendant with a resentencing hearing, except as specified.

2) Prohibits a resentencing hearing for any person found to be irreparably corrupt or incapable of rehabilitation at the time of sentencing.

3) Requires the court to resentence the defendant to a term of imprisonment with the possibility of parole unless the court determines the defendant to be irreparably corrupt or incapable of rehabilitation.

4) Requires the court to consider specified factors in making this determination, including, among other things, the defendant's family and home environment, the circumstances of the offense, and any evidence or information bearing on the possibility of rehabilitation.

5) Prohibits a youthful offender parole hearing for any person who has a pending resentencing hearing or who was found irreparably corrupt or incapable of rehabilitation at the time of sentencing or resentencing.

EXISTING LAW:

1) Provides, with some exceptions, that when a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for Life Without the Possibility of Parole (LWOP) has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing and sets forth the requirements for filing and granting such a petition. (Pen. Code, § 1170, subd. (d)(2).)

2) States that a youth offender parole hearing is a hearing by the BPH for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger, or was under 18 years of age as specified, at the time of his or her controlling offense. (Pen. Code, § 3051, subd. (a)(1).)

3) Specifies that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(1).)

4) States that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(2).)

5) Provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(3).)

6) States that a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(4).)

7) Specifies that the youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. (Pen. Code, § 3051, subd. (b)(e).)

8) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. (Pen. Code, § 3051, subd. (f)(1).)

9) States that if parole is not granted, the board shall set the time for a subsequent youth offender parole hearing, as specified. (Pen. Code, § 3051, subd. (g).)

10) Specifies that the youth offender parole provisions do not apply to inmates who were sentenced under the three strikes law or the one strike sex crimes law, or who were sentenced to LWOP. (Pen. Code § 3051, subd. (h).)

11) States that the youth offender parole provisions do not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison. (Pen. Code § 3051, subd. (h).)

12) Specifies that the Department of Corrections and Rehabilitation (CDCR) may authorize specified persons eligible for a youthful offender parole hearing to obtain an earlier youth parole eligible date by adopting regulations pursuant to subdivision (b) of Section 32 of Article 1 of the California Constitution. (Pen. Code § 3051, subd. (j).)

13) Provides a procedure for a defendant sentence to Life Without Parole for a crime committed when the defendant was under the age of 18 to petition the court for recall and resentencing. (Pen. Code § 1170, subd. (d)(2)(A)-(K).)

14) Requires the defendant file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true: (Pen. Code § 1170, subd. (d)(2)(B)(i-iv).)

   a) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law;

   b) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall;

   c) The defendant committed the offense with at least one adult codefendant; or

   d) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

15) Specify the factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole. (Pen. Code § 1170, subd. (d)(2)(F)(i-viii).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 665 will ensure that sociopaths like the killer of Erik Ingebretsen will never have a chance for parole. At the killers resentencing hearing, the judge said the crime was "so serious and the circumstances were as heinous as imaginable." Erik's killer will now be eligible for parole after serving 25 years, even after a re-sentencing hearing affirmed a sentence of life without parole just last year. The cruelty of Erik Ingebretsen's murderer cannot, and should never, be pardoned."

2) **Juvenile Sentencing - LWOP**: In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct.

2011] (*Graham*).) The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its earlier findings from *Roper v. Simmons* (2005) 543 U.S. 551, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham v. Florida*, *supra*, 540 U.S. at pp. 48-51.) However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." (*Id.* at pp. 51-52.)

In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further decided that mandatory LWOP sentences for minors under age 18 at the time of a homicide violate the prohibition against cruel and unusual punishment.

In *People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. (*People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*).) The Court stated that "the state may not deprive [juveniles] at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." (*Ibid.*) Citing *Graham* the Court stated "the sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole from the parole board." (*Id.* at pp. 268-269.) In *Caballero*, the defendant was convicted of three counts of attempted murder and received a sentence of 110-years-to-life. Relying on the reasoning in the *Graham* case, the Court found that while the juvenile did not receive a sentence of LWOP, trial court's sentence effectively deprives the defendant of any "realistic opportunity to obtain release" from prison during his or her expected lifetime, thus the sentence is a de facto LWOP sentence and violates the Eighth Amendment's prohibition against cruel and unusual punishment. (*Id.* at p. 268.)

The court in *Caballero* advised that "[d]efendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for writs of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings." (*People v. Caballero, supra,* 55 Cal.4th at p. 269.) The Court did not provide a precise timeframe for setting these future parole hearings, but stressed that "the sentence must not violate the defendant's Eighth Amendment rights and must provide [the defendant with] a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' under *Graham's* mandate." (*Ibid.*)

While the court in *Caballero* pointed out that these inmates may file petitions for writs of

habeas corpus in the trial court, the court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile.

3) **Youth Offender Parole Program:** In accordance with the decisions of the United States Supreme Court in *Graham v. Florida,* 560 U.S. 48, and *Miller v. Alabama,* 567 U.S. 460, and the California Supreme Court's urging in *People v. Caballero, supra*, 55 Cal.4th 262, SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole eligibility mechanism for individuals sentenced to lengthy determinate or life terms for crimes committed when they were juveniles. Research on adolescent brain development has established that children are different from adults in ways that are critical appropriately crafting criminal sentences. Under the youth offender parole process created by SB 260, the person has an opportunity for a parole hearing before the Board of Parole Hearings (BPH), after having served 15, 20, or 25 years of incarceration depending on their controlling offense. SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose controlling offense occurred before they reached the age of 23. AB 1308 (Stone), Chapter 675, Statutes of 2017, raised the age to include those who committed their crimes when they were 25 years of age or younger. AB 965 (Stone), Chapter 557, authorized the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to authorize an earlier youth parole eligible date for specified youth offenders by adopting regulations pursuant to the state constitution.

   The provisions of the Youthful Offender Parole Program apply to an offender sentenced to LWOP if the offender committed their crime before the age of 18. The Youthful Offender Parole Hearing does not provide any guarantee of release, but it does allow an offender that committed their crime when under the age of 18 and sentenced to LWOP an opportunity for a hearing with the possibility of parole. A youthful offender sentenced to LWOP is not entitled to a parole hearing until they have served 25 years.

   Prior to the establishment of the Youthful Offender Parole Program, SB 9 (Yee), Chapter 828, Statutes of 2012, authorized a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole (LWOP) to submit a petition for recall and resentencing to the sentencing court, as specified. This bill would create a resentencing procedure for those individuals, but would prohibit a resentencing hearing for any person found to be irreparably corrupt or incapable of rehabilitation at the time of the initial sentencing.

   This bill would also prohibit a youthful offender parole hearing for an offender that was sentenced or resentenced to LWOP and found to be irreparably corrupt or incapable of rehabilitation at the time of the sentence or resentencing. Given that rehabilitation is the process of change that takes place in the offender over time, it is odd to make a determination on the front end that an individual is incapable of rehabilitation. The Legislature has specifically provided offenders sentenced to LWOP for crimes committed before they were 18 years of age a parole hearing in the 25th year of their sentence. The Legislature has generally provided opportunities to encourage offenders to engage in programs and education to facilitate rehabilitation by providing opportunities for earlier release.

4) **Argument in Opposition**: According to the *Center on Juvenile and Criminal Justice*, "In January 2018, SB 394 went into effect, giving hope to youth who had been sentenced to life

in prison without the possibility of parole. The law was enacted in response to several US Supreme Court rulings that made clear that youth who were under age 18 at the time of a crime could not serve a sentence of life without parole. In 2012, the US Supreme Court held in Miller v. Alabama that mandatory life without parole sentences are cruel and unusual, in violation of the Eighth Amendment for most youth under age 18, and should only be used in the rarest of circumstances.2 In 2016, in Montgomery, the Court offered states a way to address these unconstitutional sentences, and SB 394 codified such this mechanism. SB 394 provides youth sentenced to life without parole the chance to go before the Board of Parole Hearings after serving 25 years in prison. Parole is only possible is if the person has grown, matured, and no longer poses a danger to their community.

"AB 665 would return California to the same untenable, unconstitutional status that existed prior to SB 394, while failing to offer any response to the protracted litigation that would certainly follow. AB 665 would also be a return to old perspectives that were based on fear, not science. California has rejected the unfounded idea that a young person cannot change, recognizing that it is no longer acceptable to throw away the lives of 16- or 17-year-olds who have committed a serious crime. Instead, our state provides opportunities for people who have committed serious crimes to show they have grown and matured and are not a danger. For these reasons, CJCJ opposes this bill on constitutional grounds and because we believe no person under the age of 18 should be sentenced to life in prison without the possibility of parole. We respectfully urge your no vote."

5) **Related Legislation**: AB 1641 (Kiley), would make youth offender parole hearings inapplicable to a person convicted of murder in the first or 2nd degree or a murder that was committed after the person had attained 18 years of age. AB 1641 is awaiting hearing in the Assembly Public Safety Committee.

6) **Prior Legislation**:

   a) AB 965 (Stone), Chapter 557, applies credits earned by a person while in the custody of Department of Corrections and Rehabilitation (CDCR) to reduce specified time limitations related to a person's youth offender parole hearing or elderly parole hearing.

   b) AB 1308 (Stone), Chapter 675, Statutes of 2017, expanded the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 23 years of age, to include those who committed their crimes when they were 25 years of age or younger.

   c) SB 394 (Lara), Chapter 684, Statutes of 2017, made a person convicted of an offense before he or she was 18 years of age and for which a life sentence without the possibility of parole had been imposed eligible for parole under a youth parole hearing during his or her 25th year of incarceration.

   d) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 18 years of age, to include those who have committed their crimes before attaining the age of 23

e) SB 260 (Hancock), Chapter 312, Statutes of 2013, established a youth offender parole hearing which is a hearing by BPH for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his/her controlling offense.

f) AB 965 (Stone), Chapter 557, authorized the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to authorize an earlier youth parole eligible date for specified youth offenders by adopting regulations pursuant to the state constitution.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

#cut50
All Saints Church, Pasadena
Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition
Asian Americans Advancing Justice - California
California Attorneys for Criminal Justice
California Public Defenders Association
California United for A Responsible Budget
Californians for Safety and Justice
Campaign for the Fair Sentencing of Youth
Campaign for Youth Justice
Center on Juvenile and Criminal Justice
Children's Defense Fund-California
Ella Baker Center for Human Rights
Equal Justice Initiative
Felony Murder Elimination Project
Human Rights Watch
Immigrant Legal Resource Center
Initiate Justice
John Burton Advocates for Youth
Juvenile Law Center
Legal Services for Prisoners With Children
MILPA
Minor Differences
National Center for Lesbian Rights
National Center for Youth Law
Pacific Juvenile Defender Center
Post-Conviction Justice Project
Restore Justice
San Francisco No Injunctions Coalition
San Jose/Silicon Valley NAACP

Santa Cruz Barrios Unidos INC.
Showing Up for Racial Justice-Bay Area
Silicon Valley De-Bug
Smart Justice
The Center for Life Without Parole Studies
Underground Scholars Initiative
Yolo County Public Defender
Youth Alive!
Youth Justice Coalition
Youth Law Center

273 private individuals

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

Date of Hearing: January 14, 2020
Chief Counsel: Gregory Pagan

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

AB 855 (McCarty) – As Amended January 6, 2020

SUMMARY: Requires the Attorney General (AG) to convene a task force, as specified, to study the use of force by law enforcement and to develop recommendations, including a model written policy. Specifically, **this bill**:

1) Requires the AG to convene a task force within the Civil Rights Enforcement Section of the Department of Justice (DOJ) to study officer-involved shootings throughout the state and to develop policy recommendations and a model written policy or general order for the use of deadly force by law enforcement officers, with the goal of promulgating best practices and reducing the number of deadly force incidents that are unjustified, unnecessary, or preventable.

2) States that the task force shall, by no later than July 1, 2022, prepare a report detailing its findings and recommendations, including a model written policy or general order that may be adopted for use by law enforcement agencies.

3) Requires, commencing on July 1, 2022, the AG shall operate a program within the Civil Rights Enforcement Section of the DOJ to review the use of deadly force policies of California law enforcement agencies. Subject to available resources and the discretion of the AG, this program shall review deadly force policies of law enforcement agencies that request review.

4) Provides that the program shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to this section, based on those policies identified as recommended best practices in the task force report developed, as specified.

5) Defines a "law enforcement agency" to mean "a municipal police department, a county sheriff's department, the Department of the California Highway Patrol, or the University of California or California State University police departments."

6) States that this title does not limit the AG's authority under the California Constitution or any applicable state law.

EXISTING LAW:

1) Specifies that subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. (Cal. Const., Art. 5, § 13.)

2) States that it shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., Art. 5, § 13.)

3) Provides that the Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their perspective jurisdictions as to the Attorney General may seem advisable. (Cal. Const., Art. 5, § 13.)

4) States that whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violation of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office. (Cal. Const., Art. 5, § 13.)

5) Specifies that the Attorney General has direct supervision over the district attorneys of the several counties of the State and may require of them written reports as to the condition of public business entrusted to their charge. (Gov. Code, § 12550.)

6) Provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of his duties, and may, where he deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect he has all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process. (Gov. Code, § 12550.)

7) Provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. (Pen. Code, § 835a)

8) Specifies that a peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Pen. Code, § 835a)

9) Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

   a) In obedience to any judgment of a competent court; or,

   b) When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

   c) When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are

fleeing from justice or resisting such arrest. (Pen. Code, §196.)

10) Requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a)(1).)

11) Allows each department or agency that employs custodial officers, to establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with other provisions, as specified. (Pen. Code, § 832.5, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 855 would reduce the number of officer-involved shootings and build back trust between law enforcement and citizens by providing a review by the DOJ of use of force policies and take action to make real change in how law enforcement operates. It will reduce unnecessary deaths by promoting alternatives and de-escalation."

2) **Argument in Support**: According to *California Attorneys for Criminal Justice*, "AB 855 would require the Attorney General to convene a task force to study officer-involved shootings and develop policy recommendations for the use of deadly force by law enforcement. This bill is necessary to develop statewide standards for the use of deadly force and will ensure there is a uniform understanding of what is expected of peace officers. AB 855 is an important step forward to continue the relationship between peace officers and the public."

3) **Argument in Opposition**: The *Riverside Sheriffs' Association* states, "No need for this bill. The Attorney General currently has the authority to convene a task force to study the use of deadly force and develop recommendations and a model use of deadly force written policy for law enforcement agencies."

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU
California Attorneys for Criminal Justice

Oppose

California Association of Highway Patrolmen
Riverside Sheriffs' Association

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

Date of Hearing: January 14, 2020
Counsel: Nikki Moore

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

AB 904 (Chau) – As Amended January 6, 2020

SUMMARY: Clarifies that if a law enforcement agency utilizes software to track a person's movements, whether in conjunction with a third party or by interacting with a person's electronic device, the provisions for obtaining a tracking device search warrant apply.

EXISTING LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)

2) Provides that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

3) Provides that a search warrant may be issued upon any of the following grounds:

   a) When the property was stolen or embezzled;

   b) When the property or things were used as the means of committing a felony;

   c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;

   d) When the property or things to be seized consist of any item or evidence that tends to show that a felony has been committed or that a particular person has committed a felony;

   e) When the property or things to be seized consist of evidence that tends to show sexual exploitation of a child or possession of child pornography;

   f) When there is a warrant to arrest a person;

   g) When a provider of electronic communication or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor,

or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor, or in the possession of another to whom he or she may have delivered them for the purpose of concealment;

h) When the things to be seized include evidence showing failure to secure workers compensation;

i) When the property includes a firearm or deadly weapon and specified circumstances related to domestic violence, examination of a person's mental condition; protective orders, as specified;

j) When the information to be received from the use of a tracking device tends to show a felony or misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;

k) For purposes of obtaining a sample of the blood of a person in a driving under the influence matter when the person has refused to submit or complete, a blood test as required, as limited and specified;

l) The property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, as specified;

m) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law;

n) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.

o) When there is evidence that tends to show a violation of the Harbors and Navigation Code;

p) When the property or things to be seized consists of evidence that tends to show a specified misdemeanor offense of invasion of privacy; and,

q) When there is a vehicle collision resulting in death or serious bodily injury to a person which tends to show the commission of a felony or misdemeanor offense. (Pen. Code § 1524, subd. (a)(1)- (19).)

4) Permits a tracking device search warrant to be issued when the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, or a misdemeanor violation of the Fish and Game Code and the Public Resources Code, and the device will assist in locating an individual who has committed or is committing a felony, or a misdemeanor violation of the Fish and Game Code or Public Resources Code. (Pen.

Code, § 1534.)

5) Provides that a tracking device search warrant may be issued as specified, and that the warrant shall identify the person or property to be tracked, and shall specify a reasonable length of time, not to exceed 30 days from the date the warrant is issued, that the device may be used. Permits the court to, for good cause, grant one or more extensions for the time that the device may be used. (Pen. Code, § 1534, subd. (b).)

6) Requires that the search warrant command the officer to execute the warrant by installing a tracking device or serving a warrant on a third-party possessor of the tracking data, and requires the officer to perform any installation authorized by the warrant during the daytime unless the magistrate, for good cause, expressly authorizes installation at another time. Requires execution of the warrant be completed no later than 10 days immediately after the date of issuance. (Pen. Code, § 1534, subd. (b).)

7) Provides that an officer executing a tracking device search warrant shall not be required to knock and announce his or her presence before executing the warrant. (Pen. Code, § 1534, subd. (b)(2).)

8) Requires, no later than 10 calendar days after the use of the tracking device has ended, the officer executing the warrant to file a return to the warrant. (Pen. Code, § 1534, subd. (b)(3).)

9) Requires, no later than 10 calendar days after the use of the tracking device has ended, the officer who executed the tracking device warrant to notify the person who was tracked or whose property was tracked as specified, and permits delay as specified. (Pen. Code, § 1534, subd. (b)(4).)

10) Authorizes an officer installing a device authorized by a tracking device search warrant to install and use the device only within California. (Pen. Code, § 1534, subd. (b)(5).)

11) Defines "tracking device" to mean any electronic or mechanical device that permits the tracking of the movement of a person or object. (Pen. Code, § 1534, subd. (b)(6).)

12) Enacts the California Electronic Communications Privacy Act ("CalECPA"), which generally prohibits a government entity from compelling the production of or access to electronic communication information or electronic device information without a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to specified conditions, except for emergency situations. (Pen. Code, §§ 1546-1546.4.)

13) Provides that a government entity may access electronic device information by means of a physical interaction or electronic communication device only: pursuant to a warrant; wiretap; with authorization of the possessor of the device; with consent of the owner of the device; in an emergency; if seized from an inmate. (Pen. Code, § 1546.1, subd. (b).)

14) Specifies the conditions under which a government entity may access electronic device information by means of physical interaction or electronic communication with the device, such as pursuant to a search warrant, wiretap order, tracking device search warrant, or

consent of the owner of the device. (Pen. Code, § 1546.1, subd. (c).)

15) Allows a service provider to voluntarily disclose electronic communication information or subscriber information, when the disclosure is not otherwise prohibited under state or federal law. (Pen. Code, § 1546.1, subd. (f).)

16) Provides that if a government entity receives electronic communication voluntarily it shall destroy that information within 90 days except under specified circumstances. (Pen. Code, § 1546.1, subd. (g).)

17) Provides for notice to the target of a warrant or an emergency obtaining electronic information to be provided either contemporaneously with the service of the warrant or within three days in an emergency situation. (Pen. Code, § 1546.2, subd. (a).)

18) Allows a person in a trial, hearing, or proceeding to move to suppress any electronic information obtained or retained in violation of the Fourth Amendment or the CalECPA. (Pen. Code, § 1546.4, subd. (a).)

19) Makes it a public offense to knowingly access and without permission take, copy, or make use of any data from a computer, computer system, or computer network, or take or copy any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network. (Pen. Code, § 502, subd. (b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The rights of individuals against unlawful search and seizure are enshrined in both the Constitutions of the United States (through the Fourth Amendment) and the State of California. Having stood for over 200 years, this basic human right has consistently been reinterpreted to account for changes in government, technology, and society. Judicial understanding of this right has morphed from an explicit right of privacy within the home and personal documents, to an expansive protection against the collection of information by the government in a great many applications. Most recently, the United States Supreme Court recognized in *Carpenter v. United States* that the use of cell phone location information by law enforcement is an invasion of personal privacy, which requires the granting of a search warrant.

   "This decision certainly represents a landmark case in the jurisprudence of the Supreme Court, but had limited applicability to the residents of California because this specific requirement has been applied to law enforcement agencies in California since 2012. With the rest of the country following suit, it is important that California continues to look ahead at the changing landscape of technology and maintains the lead in protecting our residents against unlawful search and seizure.

   "Penal Code Section 1534 currently requires search warrants prior to an officer 'installing a tracking device or serving a warrant on a third-party possessor of the tracking data.' It is, however, no longer necessary for an officer to make physical contact with a device, person, or vehicle to 'install' a 'device' in order to track an individual. On the contrary, a government

official need only have wireless access to download tracking software that will provide investigators with far more information than just a person's or a vehicle's location.

"AB 904 would make clear that a tracking device includes any software that permits the tracking of the movement of a person or object for purposes of the statute."

2) **Constitutional Protections Against Unreasonable Searches and Seizures**: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." (U.S. Const., 4th Amend.)

The Fourth Amendment was borne from the concern that government officials would arbitrarily and unreasonably rummage through the homes and belongings of its citizens; it acts as a shield to protect the privacy and security of individuals against the arbitrary invasion of governmental officials. When society deems a place or thing to be covered by a reasonable expectation of privacy, a warrant supported by probable cause is required to search or inspect that place or thing. No single rubric definitively resolves which expectations of privacy are entitled to protection under the Fourth Amendment, but a fundamental purpose in imposing limitations on government intrusions has long been to prevent too pervasive a state of police surveillance.

The government's ability to obtain a warrant to search a place or thing is generally limited to offenses that warrant such invasion in the first place. California law specifies the types of crimes that permit intrusion into a person's places or things including: when property is stolen or embezzled, among other specified offenses; when there is probable cause that a felony was committed and for a limited list of specified misdemeanors; and when there is a warrant to arrest a person. In the last five years, the Legislature has expanded the crimes that will allow the issuance of a warrant, and continues to suggest additions to the list.

Fourth Amendment jurisprudence has developed to permit a government entity to access information held by a third party, in some cases with a warrant and in some, without. The third-party doctrine is grounded in the idea that an individual has a reduced expectation of privacy when knowingly sharing information with another. For example, the United States Supreme Court held that a person does not have a reasonable expectation of privacy in bank records, which may be subpoenaed by law enforcement with reasonable suspicion that those records will reveal that a crime has been committed.[1] More recently, however, the court has said that for law enforcement to obtain location information from a third party through use of a cellphone likely requires a warrant, except in exigent circumstances.

As technology advances, the courts and lawmakers should be careful not to "embarrass the future" by making decisions that are in discord with the "progress of science."[2] This sentiment is at the core of the holdings in three recent United States Supreme Court cases,

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[1] *United States v. Miller*, 425 U.S. 435 (1976).
[2] *Carpenter v. United States*, 585 U.S. _ (2018) (citing *Northwest Airlines, Inc. v. Minnesota*, 322 U. S. 292, 300 (1944), and *Olmstead v. U.S.*, 277 U. S. 438, 473-474 (1928)).

Jones,[3] *Riley*[4] and *Carpenter*[5] which establish warrant requirements for use of and access to electronic communications and devices to surveil a person.

In tandem with the evolving Supreme Court case law, California passed the CalECPA with SB 178 (Leno) Chapter 651 in 2015. SB 178 established in statute that law enforcement officials are required to obtain a warrant before "searching" a third party's electronic records for law enforcement purposes, either by actually searching a person's cellphone or electronic device, or by requesting that information from a third party which holds it.

Any California court issuing a warrant must decide whether to grant that warrant on a case by case basis. Under CalECPA, a law enforcement agency must have probable cause to search electronic records held by a third party, including tech companies that host untold terabytes of data about their users and subscribers. The law limits the reach of any warrant to information described with particularity, under specific time periods, identifying the "target individuals or accounts, the applications or services covered, and the types of information sought." The law also specifies that any information unrelated to the objective of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

CalECPA states that any warrant applied for shall comply with California and federal law, and that the normal procedures for a warrant apply including a typical warrant for records or things, or an arrest; a wiretap order; a tracking device search warrant; and a pen register or trace device; among others. When CalECPA was initially passed, it did not include reference to a tracking devices or pen registers. In 2016, the Legislature passed AB 1924 (Low) to authorize the use of a tracking device and pen register pursuant to CalECPA with a warrant.

3) **Existing Law Requires a Warrant to Track a Person's Movements**: In 2012, the United States Supreme Court held in *United States v. Jones* that the use of a self-contained GPS tracking device ("slap-on") on a motor vehicle to monitor the vehicle's movements constituted a "search." Thus a warrant is required to utilize such technology. That year, California passed AB 2055 (Fuentes) Chapter 818 to codify and expand the case, and require a warrant when a government entity utilizes such tracking device. Now, Pen. Code, §1534 sets forth specific procedures for obtaining a tracking device search warrant. Tracking devices may only be used to investigate felony violations, or misdemeanor violations of the Public Resources Code and the Fish and Game Code. A tracking device warrant is not authorized for other misdemeanor conduct for which a warrant for historical information is permitted, like to investigate a misdemeanor offense involving a motor vehicle.[6]

After CalECPA was passed by the Legislature in 2015, there was concern that the law nullified existing provisions of law permitting the use of pen registers and tracking devices. The next year, the Legislature passed AB 1924 (Low) Chapter 511 to incorporate existing

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[3] *United States v. Jones*, 564 U.S. 400 (2012) (Holding that the attachment of a global-positioning-system tracking device to an individual's vehicle, and monitoring of the vehicle's movements on public streets, constituted a search or seizure within the meaning of the Fourth Amendment.)
[4] *Riley v. California*. 573 U.S. 373 (2014) (Holding that police may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.)
[5] *Carpenter v. United States*, 585 U.S. _ (2018) (Holding that the government's acquisition from wireless carriers of defendant's historical cell-site location information was a search under the Fourth Amendment.)
[6] Pen. Code, § 1524, subd. (a)(19).

laws permitting the use of pen registers and tracking devices into CalECPA. The result of amending CalECPA to include the tracking device search warrant procedures was to establish that any time a law enforcement agent seeks to obtain a person's real-time location data, that a warrant complying with Pen. Code, §1534 is required, whether the tracking occurs by utilizing a "slap-on" device or by compelling production of that information from a service provider through CalECPA, or by physically interacting with an electronic device, or by electronically communicating with an electronic device.

CalECPA sets forth rules when a government agency seeks to access a person's information from a third party, like Google, or when an official seeks to seize a person's cellphone and search it. The plain language of CalECPA encompasses activity that may arguably constitute certain types of hacking activity of an electronic device by specifying that the law's dictates apply when government engages in "physical interaction or electronic communication with the device." Pen. Code, § 1546.1, subd. (c).

Cellphones, vehicle computer systems, and other electronic devices are susceptible to being hacked, and also to receiving malware, a virus, or software which exploit a vulnerability in a device's operating system and provide the entity exploiting the vulnerability the ability to access, among other things, a person's location data.

This bill clarifies that the procedures for employing a tracking device, including heightened and specified warrant requirements, must be complied with if a law enforcement agency uses software by means of physical interaction or electronic communication with an electronic device, to track a person's movements.

4) **Concerns that this Bill Authorizes Law Enforcement to Hack a Person's Cellphone or Device**: Whether government officials are permitted to "exploit vulnerabilities in software and hardware products to gain remote access to computers"[7] or other electronic devices to "remotely search, monitor user activity on, or even interfere with the operation of those machines" is not squarely addressed by California law.

Pen. Code, § 502 prohibits hacking activity generally, including the right to be free "from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer system." There is no exception for law enforcement officials. In contrast, Pen. Code, § 632 which prohibits recording a private communication without all parties consent to record has a specified exemption for law enforcement to record for investigatory purposes. Thus, Pen. Code, § 502 does not appear to authorize law enforcement hacking activity.

Turning to the plain language of CalECPA, the law recognizes that a government entity may have the ability to access a person's electronic information "by means of physical interaction or electronic communication with" an electronic device, and also may compel a service provider to provide records, electronic information, and subscriber information, including things like emails, text messages, and historical location data.

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[7]Riana Pfefferkorn, *Security Risks of Government Hacking* (Sept. 2018) Stanford Law School: The Center for Internet and Society, available at: https://cyberlaw.stanford.edu/files/publication/files/2018.09.04_Security_Risks_of_Government_Hacking_Whitepaper.pdf [last accessed Jan. 8, 2020].

The legislative history of SB 178 (Leno) does not state that a possible intent of CalECPA is to authorize the hacking of an electronic device. (See bill analyses for SB 178 from the Assembly and Senate Public Safety Committees and the Assembly Privacy and Consumer Protection Committee.) However the plain language of the statute states that a physical interaction or communication with an electronic device is permitted with a warrant. Arguably, this may encompass activity that is similar to hacking or the sending of malware or a virus to an electronic device.[8] CalECPA recognizes that the proper type of warrant is required to access information. For example, if a police department is coordinating with AT&T to track the real-time movements of a person through their cellphone with a search warrant, the specified tracking device search warrant procedures would apply in addition to any other provisions of CalECPA.

Whether a judge would authorize activity that constitutes the hacking of a person's cellphone or otherwise engage in conduct that violates Pen. Code, § 502, for which law enforcement officials have no exception, is another question. And if a judge did so authorize such activity, would reviewing courts deem that to be a reasonable search under Fourth Amendment scrutiny?

5) **Argument in Support**: According to the *California Attorneys for Criminal Justice*, "This bill closes a loophole in the law that could allow for the software-based tracking of individuals by law enforcement without a warrant. Search warrants protect the public from unreasonable searches and seizures, a constitutional right that CACJ supports and believes should be expanded in the face of new technology."

6) **Argument in Opposition**: According to the *Electronic Frontier Foundation*, "A.B. 904 would amend the California Electronic Communications Privacy Act ('CalECPA'), a watershed statute that established bright-line rules for California government entities seeking to obtain, retain, and use digital information. CalECPA was drafted with the specific intention of reinforcing the privacy rights set forth at Article 1, Section 1, of the California Constitution—a response to the 'modern threat to personal privacy' posed by increased surveillance and then-emerging data collection technology. *White v. Davis*, 13 Cal.3d 757, 774 (1975).

"We are extremely concerned that A.B. 904 would create and authorize, for any California government entity, an entirely new 'procedure for accessing or installing software into an electronic device.' CalECPA already allows access to information stored on a device. A.B. 904's new procedure would seem to expressly authorize the government to 'access' applications like cameras, microphones, or electronic mail on a person's smartphone, tablet, or computer. At the very least, this could allow the government to use a person's device as a hidden camera or microphone, or as a launching pad to covertly access email or other documents or communications that are not stored on the device.

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[8]The only reported hacking activities have been accomplished by federal authorities in a highly controversial public case where a private company was hired to hack an iPhone of a California resident. See Ellen Nakashima, *FBI Paid Professional Hackers One-Time Fee to Crack San Bernardino iPhone*, Washington Post (April 12, 2016), available at: https://www.washingtonpost.com/world/national-security/fbi-paid-professional-hackers-one-time-fee-to-crack-san-bernardino-iphone/2016/04/12/5397814a-00de-11e6-9d36-33d198ea26c5_story.html [last accessed Jan. 8, 2020].

"Even worse, the bill expressly authorizes 'installing software,' which appears to authorize government 'hacking' into people's devices in order to install malware. This would constitute a broad new surveillance authority that presents serious risks to computer security. At this point, it is an all-too-familiar story when even elite intelligence and law enforcement agencies are unable to maintain control of their hacking tools and they are exploited by outside actors."

7) **Prior Legislation**:

a) SB 178 (Leno), Chapter 651, Statutes of 2015, prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

b) AB 929 (Chau), Chapter 204, Statutes of 2015, authorizes state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices.

c) AB 1924 (Low), Chapter 511, Statutes of 2016, requires an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device direct that the order be sealed until the order, including any extensions, expires, and would require that the order or extension direct that the person owning or leasing the line to which the pen register or trap and trace device is attached not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person.

d) AB 1638 (Olbernolte), Chapter 196, Statutes of 2019, expands authorization for the issuance of a search warrant to obtain information from a motor vehicle's software that tends to show the commission of a felony or misdemeanor offense involving a motor vehicle, resulting in death or serious bodily injury.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice

Oppose

American Civil Liberties Union of California
Electronic Frontier Foundation

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744

Date of Hearing: January 14, 2020
Counsel: David Billingsley

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

AB 1210 (Low) – As Amended January 6, 2020
As Proposed to be Amended in Committee

SUMMARY: Makes it crime to enter the property adjacent to a dwelling with the intent to steal a package that has been shipped to the dwelling. Specifies that if violations are committed by a person acting in concert with one or more persons, on two or more separate occasions within a 12-month period which exceed $950, the offense is punishable as a felony or a misdemeanor. Specifically, **this bill**:

1) Creates a crime for a person to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier.

2) Defines "curtilage" as "an area adjacent to or in the immediate area of the home, and to which the activity of home life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard."

3) Specifies that violations of the provisions of this bill committed by a person acting in concert with one or more persons, on two or more separate occasions within a 12-month period, and the aggregated value of the packages stolen or attempted to be stolen within that 12-month period exceeds $950, the offense is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year or as a realigned felony.

4) States that violations of the provisions of this bill committed by a person acting in concert with one or more persons, the offense is punishable as a misdemeanor by imprisonment in the county jail not exceeding one year, or by a fine not exceeding $1000, or by both.

5) Specifies that any other violation of the provisions of this bill are punishable as a misdemeanor by imprisonment in a county jail not exceeding six months, or by a fine not exceeding $1000, or by both.

EXISTING LAW:

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

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

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

provision does not apply to theft of a firearm. (Pen. Code, § 490.2, subd. (c).)

4) Lists the theft-related offenses which qualify a defendant for enhanced status for the crime of petty theft with a prior theft conviction as:

   a) Petty theft;

   b) Grand theft;

   c) Theft, embezzlement, forgery, fraud, and identity theft committed against an elder or dependent adult;

   d) Auto theft;

   e) Burglary;

   f) Carjacking;

   g) Robbery; and,

   h) Receiving stolen property. (Pen. Code, § 666.)

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

6) Specifies that a burglary of an inhabited dwelling is burglary of the first degree. (Pen. Code, § 460, subd. (a).)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The scourge that is package theft has hit every neighborhood and community in this state. Current law only encourages these so-called porch pirates, as our district attorneys struggle to justify spending precious resources on prosecuting crimes that carry negligible penalties. It's time we send a clear message to porch pirates in California: under AB 1210 you will be prosecuted for these serious and invasive crimes."

2) **Proposition 47 and Theft**: Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. According to the California

Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See (http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf)

Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. 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. (See Legislative Analyst's Office analysis of Proposition 47 (http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf)
The offenses made misdemeanors by Proposition 47 also include: the new offense of commercial burglary where the value of the property taken or intended to be taken is $950 or less (Pen. Code, § 459.5; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879); and petty theft with a prior theft conviction. (Pen. Code, § 666; *People v. Rivera*, *supra*, 233 Cal.App.4th at p. 1091.) Specifically, Proposition 47 eliminated the penalties formerly associated with the "petty theft with a prior" statute except for a narrow category of sex offenders, persons with qualifying "super strikes," and those persons convicted of theft from elders or dependent adults. Those persons are still eligible for felony punishment in state prison sentence. (Pen. Code, § 666.)

3) **Proposition 47:** Proposition 47 directed that theft crimes of $950 or less shall be considered petty theft and be punished as a misdemeanor, with limited exceptions for individuals with specified prior convictions. Proposition 47 contained specific language reflecting the purpose and intent of the proposition:

> "In enacting this act, it is the purpose and intent of the people of the State of California to: ". . . (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes. . . " (http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47)
>
> "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.)

This bill would make it a crime to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. The crime could be charged as a felony if the person acted in concert with one or more persons, on two or more separate occasions within a 12-month period, and the aggregated value of the packages stolen or attempted to be stolen within that 12-month period exceeds $950. Although the circumstances under which a theft of an item under $950 could be charged as a felony is limited, it is not clear whether such provisions would be contrary to the intent of Proposition 47. The Legislature adopted a similar structure allowing for a felony charge based on the theft of an item less than $950 when it passed AB 1065 (Jones-Sawyer) in 2018.

4) **Practical Considerations**: A violation of the provisions of this bill are committed on two or more separate occasions within a 12-month period that exceeds $950, the offense can be punished as a felony. Those provisions raise practical concerns about implementation. For example, will the prosecutor defer filing a complaint based on the belief that the individual might re-offend within 12 months? How will prosecutors keep track of these offenses in order to aggregate them in the meantime? Will defendants assert their right to a speedy trial in the meantime? A defendant's right to a fair trial and due process of law under article I, section 15 of the California Constitution may be violated where there is an unreasonable delay between the time an offense is committed and the time when the accusatory pleading is filed. (*People v. Morris* (1988) 46 Cal.3d 1, 37, disapproved on other grounds in *In re Sassounian* (1995) 9 Cal.4th 535, 543-544, fn. 5; *Scherling v. Superior Court* (1978) 22 Cal.3d 493, 504-505.) Preaccusation delay may also violate a defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution, where the delay was intentional and done for the purpose of tactical advantage. (*United States v. Marion* (1971) 404 U.S. 307, 324 [30 L.Ed.2d 468].)

   If a defendant has already been prosecuted for a single theft offense under $950, aggregating that theft offense into a subsequent theft prosecution would pose a double jeopardy problem. State and federal double jeopardy principles provide that no one can be subjected to a second prosecution for a public offense for which he or she has been prosecuted and convicted or acquitted. (Pen. Code, § 687.)

5) **Misdemeanor Crimes are Treated Seriously:** The author's statement indicates that, "Current law only encourages these so-called porch pirates, as our district attorneys struggle to justify spending precious resources on prosecuting crimes that carry negligible penalties." The penalties involved for theft of packages $950 or less, is a misdemeanor, theft of packages of value in excess of $950 can be charged as a felony.

   The suggestion that district attorneys' offices won't devote resource to prosecuting misdemeanors seems inconsistent with district attorney practices throughout the state. DUI and domestic violence are crimes which generally, or frequently, are charged and punished as a misdemeanors. District attorneys are not indicating that it isn't worth their time or resources to prosecute a DUI because the offense is a misdemeanor. District attorneys take misdemeanor crime seriously. Such prosecutions make up a significant proportion of a D.A. office's total case load. Misdemeanor charges are not ignored simply because the maximum penalty for such offenses is lower than the maximum penalty on a felony offense.

   Conviction of a misdemeanor can also have a substantial impact on a defendant. Conviction of a misdemeanor results in the direct consequences of jail, fines, and court supervision. Conviction of a misdemeanor also results in significant collateral consequences in areas like employment and professional licensing.

6) **Proposed Committee Amendments:** The amendments proposed to be adopted in committee would require that person act in concert with one or more persons, along with the other elements required by this bill before such conduct could be charged as a felony. Packages taken from a porch that did not aggregate to more than $950 but involved acting in concert would be punished as a misdemeanor with up to one year in county jail. Packages taken from a porch that did not aggregate to more than $950 and involved acting in concert

would be punished by a misdemeanor with up to six months in the county jail.

7) **Argument in Support**: According to the *California District Attorneys Association*, "This bill would make it unlawful to enter onto the curtilage of the home with the intent to steal packages delivered by public or private carriers. As you know, along with an increase in packages being shipped and delivered through the mail or by other means has come a staggering increase in the theft of these packages from the doorsteps of persons ordering such packages.

"Although theft of such packages can be prosecuted as a felony if the package has been delivered by UPS under federal law (see 18 U.S.C.A. § 1708), theft of a privately-delivered package may only be prosecuted as a misdemeanor under state law unless the items contained in the package are valued at more than $950 (see Pen. Code, §§ 490 and 490.2). But entry onto the curtilage of a residence with the intent to steal, while not as dangerous as entry into the home itself, comes with elevated dangers (to both the perpetrator and victim) and often involves a breach of personal privacy and security much greater than the typical theft. The law should be able to let the punishment fit the crime and dissuade individuals from engaging in this burglarious-like behavior by creating the potential for punishment as a felony regardless of the value of the item the package haphazardly contains."

8) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 1210 is unnecessary and bad public policy. Entering on to someone's property with the intent to steal a package is already criminalized under a number of different California and federal statutes. It can be punished as an attempted theft and if the individual actually takes something as either petty theft or grand theft depending on the value of the item. If the stolen item was shipped by mail, it is punishable under California Penal Code section 530.5(e) as a one year misdemeanor or United States Code section 1708 of Title 18 by a fine or up to five years in prison or both.

"AB 1210 is bad public policy because it seeks to abrogate the sweeping changes that the voters enacted by initiative when they passed Proposition 47 in November 4, 2014 reducing many non-violent felony crimes to misdemeanors. Voters made a choice to redirect scarce tax dollars from mass incarceration to making communities safer from violent crimes.

"At the time that Proposition 47 was enacted the California Department of Corrections and Rehabilitation was under a federal court order to reduce the number of prisoners being held in California because the conditions resulting from overcrowding were so bad that the federal courts had held that it was cruel and unusual punishment violating the Eighth Amendment of the United States Constitution.

"Mass incarceration in California hit lower income and minority communities the hardest. Felony convictions made it difficult, if not impossible, for individuals to reintegrate into their communities. They were unable to find gainful employment and in some cases even housing leading to a high rate of re-offense. All of the money that was spent on incarcerating Californians left education, medical and mental health care and housing competing for the remaining tax dollars."

9) **Related Legislation**:

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

b) AB 1476 (Ramos), would allow a person to be charged with a felony for petty theft with specified prior theft convictions. AB 1476 was never heard in the Assembly Public Safety Committee.

10) **Prior Legislation**:

a) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the new crime of organized retail theft and specifies the penalties for violations of the new provisions.

b) AB 3011 (Chau), would have specified that if the value of the property taken or intended to be taken exceeds $950 over the course of distinct but related acts, that conduct will constitute grand theft, if the acts are motivated by one intention, one general impulse, and one plan. AB 3011 was never heard in the Assembly Public Safety Committee.

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

d) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes, including reducing petty theft with a prior theft conviction to a misdemeanor, except in the case where the person has a prior super strike conviction or a conviction for a specified theft-related offense against an elder or dependent adult.

e) AB 2372 (Ammiano), Chapter 693, Statutes of 2010, increased the threshold amount that constitutes grand theft from $400 to $950.

f) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, amended petty theft with a prior to require three prior theft-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Police Chiefs Association
California Retailers Association
California State Sheriffs' Association
Peace Officers Research Association of California
San Jose Police Department

Oppose

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association

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

AMENDMENTS TO ASSEMBLY BILL NO. 1210
AS AMENDED IN ASSEMBLY JANUARY 6, 2020

Amendment 1
On page 2, in line 16, after "committed" insert:

by a person acting in concert with one or more other persons,

Amendment 2
On page 2, between lines 22 and 23, insert:

(2) If a violation of this section is committed by a person acting in concert with one or more other persons, the offense is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

Amendment 3
On page 2, in line 23, strike out "(2)" and insert:

(3)

Amendment 4
On page 2, in line 24, strike out "paragraph (1)" and insert:

paragraph (1) or (2)

Amendment 5
On page 2, in line 25, strike out "one year." and insert:

six months or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

Date of Hearing: January 14, 2020
Counsel: Sandy Uribe

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

AB 1450 (Lackey) – As Amended January 6, 2020

SUMMARY: Allows a police or sheriff's department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are investigated and determined to be substantiated to the Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI). Specifically, **this bill**:

1) Eliminates the provision in existing law which prohibits law enforcement from forwarding reports of abuse and neglect to the DOJ for inclusion in the CACI, and instead authorizes a police or sheriff's department to forward to DOJ a report of its investigation of known or suspected child abuse or severe neglect that is determined to be substantiated.

2) Specifies that law enforcement can only forward reports of known or suspected child abuse or severe neglect made on or after January 1, 2021, or reports made before January 1, 2021 pertaining to open cases still being investigated on that date.

3) States that if a previously filed report subsequently proves to be not substantiated, DOJ shall be notified in writing of that fact and shall not retain the report.

4) Requires a law enforcement department which chooses to forward reports of known or suspected abuse and neglect to DOJ for inclusion in CACI to adopt notification and grievance procedures.

5) Requires the law enforcement department to provide written notice of the CACI listing, a referral number for the person's case, a description of the grievance process, and a form to request a hearing within five days. This information shall be sent to the person's last known address.

6) Mandates that the notice contain the following information:

   a) Notice that the police or sheriff's department has completed an investigation of suspected child abuse or severe neglect, determined it to be substantiated, and submitted the person's name to the DOJ for inclusion on the CACI; and

   b) The victim's name, a brief description of the alleged abuse, and the date and location where it occurred.

7) Requires a person wanting a grievance hearing to request it within 30 days. Failure to send the completed request form within this time frame constitutes a waiver of the right to the hearing.

8) States that a completed grievance form must contain the referral number; the name of the investigating agency; the person's contact information and date of birth; the reason for the grievance, and contact information for the person's attorney or representative, if any.

9) States that the grievance hearing must be scheduled within 10 business days, held within 60 calendar days, and that notice of the hearing date must be given at least 30 days before its scheduled date, unless the person and the department agree otherwise.

10) Allows either party to request a continuance not to exceed 10 days. Additional continuances may be allowed for good cause or with mutual agreement of both parties.

11) States that the person requesting the hearing may have an attorney or other representative present.

12) Allows the law enforcement department to resolving the grievance at any point by changing a finding of substantiated abuse and neglect to not substantiated and notifying DOJ of the need to remove the person's name from CACI.

13) States that the officer assigned to conduct the hearing must be a staff member who was not directly involved in the decision to include the person's make in the CACI and who was not involved in the investigation of alleged abuse or neglect.

14) Requires a grievance review officer to be capable of objectively reviewing case information and of conducting a fair and impartial hearing.

15) Requires voluntarily recusal by the grievance officer if the officer has in interest in the proceedings or cannot be fair and impartial. A party may request disqualification at any time prior to the close of the record on the ground that a fair and impartial hearing may not be obtained.

16) Allows both parties to examine the all records and relevant evidence that is not otherwise confidential that the opposing party intends to introduce at the grievance hearing.

17) Requires the law enforcement agency to redact specified information to protect the identity and health and safety information of a mandated reporter.

18) Requires the parties to exchange witness lists at least 10 days in advance of the hearing. Failure to do so may constitute grounds for objection to the consideration of the evidence or testimony of a witness during the hearing.

19) Establishes rules for presentation of testimony and examination of the witnesses.

20) Mandates that the hearing be audio recorded as part of the official administrative record.

21) Requires the law enforcement agency to maintain the official administrative record, as specified, and to file it with the court in the event any party seeks judicial review.

22) Requires the grievance review officer to submit a written decision within 30 calendar days of the hearing. The decision must contain a summary statement of the facts, the issues involved, the findings, and the basis for the decision. The officer shall make a determination based on

the evidence presented at the hearing, as to whether the allegation of child abuse or severe neglect is unfounded, substantiated, or inconclusive, as specified.

23) Provides that a copy of the decision must be sent to the person who requested the hearing and the person's attorney or representative, if any.

24) Provides that if the person who requested the hearing chooses to challenge the determination, the evidence and information disclosed at the hearing may be part of an administrative record for a writ of mandate, and shall be kept confidential.

25) Makes conforming cross references and technical changes.

EXISTING LAW:

1) Requires that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, shall report it immediately to a specified child protection agency. (Pen. Code, § 11166, subd. (a).)

2) Requires specified local agencies to send the California Department of Justice (DOJ) reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Pen. Code, § 11169, subd. (a).)

3) Directs the DOJ to maintain an index, referred to as the CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170, subds. (a)(1) and (a)(3).)

4) Allows DOJ to disclose information contained in the CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. (Pen. Code, § 11170, subd. (b).)

5) Requires reporting agencies to provide written notification to a person reported to the CACI. (Pen. Code, § 11169, (c).)

6) Provide that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code, §11169, subds. (d) and (e).)

7) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

8) Requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

9) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, §11169, subd. (f).)

10) Provides that any non-reoffending minor who is listed in CACI shall be removed after 10 years. (Pen. Code, § 11169, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1450 is back again because I know the severe consequences that ensue when we stand idly by and do nothing to protect the children of our communities. AB 1450 is necessary because law enforcement officials are often the first responders on the scene of child abuse claims. Without a complete database of information at the disposal of these officials, they are not seeing the full picture; similarly, because they are investigating claims of abuse, they should be able to submit their own report, irrespective of who has already submitted a report on behalf of the county or child welfare services. This is a commonsense measure and a luxury that was afforded to law enforcement agencies for many years; it is time we reinstate this measure and equip law enforcement officials with everything they need to be safe and successful."

2) **Child Abuse Central Index (CACI)**: The CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. This is not an index of persons who necessarily have been convicted of any crime; it is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency (local welfare departments and law enforcement) to meet the requirements for inclusion, according to standards that have changed over the years.

   Access to CACI initially was limited to official investigations of open child abuse cases, but in 1986 the Legislature expanded access to allow the Department of Social Services (DSS) to use the information for conducting background checks on applications for licenses, adoptions, and employment in child care and related services positions.

   DOJ provides the following summary of CACI on its website:

   "The Attorney General administers the Child Abuse Central Index (CACI), which was created by the Legislature in 1965 as a tool for state and local agencies to help protect the health and safety of California's children.

   "Each year, child abuse investigations are reported to the CACI. These reports pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. The reports are submitted by county welfare and probation departments.

   "The information in the Index is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information also is provided to designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements, and adoptions. Dissemination of CACI information is restricted and controlled by the Penal Code.

   "Information on file in the Child Abuse Central Index include:

- "Names and personal descriptors of the suspects and victims listed on reports;
- "Reporting agency that investigated the incident;
- "The name and/or number assigned to the case by the investigating agency;
- "Type(s) of abuse investigated; and
- "The findings of the investigation for the incident are substantiated.

"It is important to note that the effectiveness of the index is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a 'pointer' back to the original submitting agency." (See <http://oag.ca.gov/childabuse>.)

DOJ is not authorized to remove suspect records from CACI unless requested by the original reporting agency. (https://oag.ca.gov/childabuse/selfinquiry.)

3) **Prior CACI Legislation and Litigation**: In 1963, the Legislature began requiring physicians to report suspected child abuse. (See *Smith v. M.D.* (2003) 105 Cal.App.4th 1169 [discussing evolution of child abuse detection laws].) Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of the CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in the CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate the parents' due process rights. Specifically,"[t]he lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the [parents'] due process rights." (Id.) The court ruled that, "California must promptly notify a suspected child abuser that his name is on the CACI and provide 'some kind of hearing' by which he can challenge his inclusion." (*Id.* at 1201.)

In 2011, the Legislature amended the Child Abuse and Neglect Reporting Act to provide for a hearing to seek removal from the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 2011.) The same legislation also limited the reports of abuse and neglect for inclusion in CACI to substantiated reports. Inconclusive and unfounded reports were removed. And of

particular significance to this bill, the Legislature also amended the Act to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ for inclusion in the CACI.

This bill would undo the latter legislative change, and allow, but not require, law enforcement to report claims of substantiated abuse to CACI.

The policy committee analyses for AB 717 (Ammiano) do not specifically discuss why the statute was amended to prohibit law enforcement from forwarding reports of abuse and neglect to the DOJ. However, both the Assembly Public Safety Committee and Senate Public Safety Committee analyses noted that bill codified several requirements addressed in court settlements as well as constitutional deficiencies noted in other cases. Thus, it is likely that the provision was a result of a settlement in *Gomez v. Saenz* (2003) which required county social service agencies, but not law enforcement agencies, to provide notice and a hearing. As a result, there was no method for removal of a CACI report when the report was made by a law enforcement agency.

4) **Current Practice**: Department of Social Services (DSS) child welfare staff will submit the names of perpetrators from "substantiated" referrals of abuse and/or neglect to the DOJ for inclusion in the CACI. Staff will further inform those persons that their name has been submitted for listing on the CACI, and provide them with information on the process to grieve/contest the listing.

   In response to the settlement in *Gomez v. Saenz*, all child welfare departments in California have agreed to notify individuals of their listing on the CACI, give individuals the right to grieve the listing, and provide grievance hearings for those who challenge the listing.

   Pursuant to the *Gomez v. Saenz* settlement, when submitting a person's name for listing on the CACI, the Department is required to provide the person (by mail) with three forms – the completed Notice of Child Abuse Central Index Listing (SOC 832), the Request for Grievance Hearing (SOC 834), and the Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833). (http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC833.pdf)

   If an individual requests a grievance hearing, there are strict procedures to follow. For example, the hearing must occur within 10 business days, and no later than 60 calendar days from the request for a hearing. The complaining party is entitled to have an attorney or other representative assist him or her at the hearing. The grievance hearing officer must be a person not directly involved in the decision or in the investigation that is the subject of the hearing; nor can a coworker or direct supervisor of persons involved in making the finding be the hearing officer. The complaining party and his or her representatives must be permitted to examine all records and relevant evidence. The complaining party is entitled to a witness list. All testimony must be given under oath or affirmation. The proceedings must be audio recorded as part of the official administrative record. There must be a written decision, and the complainant may challenge that decision by means of a writ of mandate. (http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC833.pdf)

   This bill would apply many of the DSS grievance procedures to those law enforcement agencies which seek to begin forwarding allegations of substantiated abuse and neglect to

DOJ for inclusion in the CACI.

5) **Governor's Veto Message**: In 2018, the Legislature passed AB 2005 (Santiago), which was substantially similar to this bill; however it was vetoed by then-Governor Jerry Brown. In his veto message, the Governor said:

"In 2011 I signed AB 717 (Ammiano), which was intended to update the procedures governing the index as well as establish due process protections for individuals added to the database. At that time, the ability of law enforcement to submit cases to the index was eliminated, in part to eliminate redundancies and reduce costs.

"I am not fundamentally opposed to once again granting law enforcement the authority to submit cases to the index, however this bill does so in a manner that would undoubtedly lead to inconsistent application across and within counties. I encourage the proponents to work with the relevant stakeholders, including the Department of Social Services and Department of Justice, to further refine this proposal for future consideration."

6) **Argument in Support**: According to the *Los Angeles County Sheriff's Department*, the sponsor of this bill, "As of January 1, 2012, law enforcement is prohibited from forwarding to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect. Since that time investigations of suspected child abuse or sever neglect, including sexual abuse, by, for example, day care providers, clergy, or babysitters have gone unreported.

"According to the Department of Justice Child Abuse Central Index internet homepage, 'The information in the CACI is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims.' AB 1450 will ensure the Child Abuse Central Index continues to be a critical and useful tool to those charged with child abuse investigations.

"AB 1450 would delete the provision prohibiting a police or sheriff's department from forwarding a report of suspected child abuse to the Department of Justice. This bill would require a police or sheriff's department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are substantiated to the Department of Justice.

"Additionally, AB 1450 will clarify due process procedures for those who wish to contest their inclusion in the Child Abuse Central Index."

7) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "The existing restriction against law enforcement reporting to CACI was part of a set of statutory reforms intended to address the terrible due process violations and abuses that had occurred. CACI is a database of reported incidents of child abuse and neglect, maintained by the California Department of Justice. The information can be accessed by law enforcement agencies or other agencies as needed in conducting child abuse investigations, or by agencies for use in making decisions regarding hiring and licensing for positions involving supervision of children and decisions regarding prospective foster and adoptive parents. For much of the history of the program, it had no safeguards to ensure that the information included in the database was reliable, and gave the subjects of the reports no means of challenging the

information. CACI became the subject of numerous legal challenges. In response to one such challenge, the Ninth Circuit Court of Appeals held that the CACI violated the due process clause of the Fourteenth amendment because the then-existing procedures for challenging allegations reported into the system were inadequate. Humphries v. County of Los Angeles (2009) 554 F.3d 1170, 1200.

"The bill puts in place notice and grievance procedures similar to those required under Department of Social Services (DSS) regulations applicable when child welfare agencies report individuals to the CACI. These procedures, like the DSS procedures, fail to provide adequate due process protections for persons who may be wrongly reported. Moreover, we note that where law enforcement is the agency submitting a report to CACI and also responsible for providing a grievance proceeding, there are heightened interests due to the possibility of criminal prosecution, and procedural problems not present when a child welfare agency is conducting the proceedings. Individuals accused of abuse will be put between a rock and a hard place, on the one hand facing the possibility that evidence they provide in a grievance proceeding might then be used to support a criminal case against them, and on the other hand knowing that if they fail to make their case for removal from the CACI database, they will face the numerous negative consequences of being listed as a child abuser for an indefinite period of time. We oppose the effort to re-authorize law enforcement to report incidents to CACI without providing adequate protections for the rights of those individuals who will be reported.

"The facts in the Humphries case are instructive: the Humphries were accused of abuse by Mr. Humphries' daughter from a previous marriage. They were arrested on a charge of felony torture, their other two children were placed in foster care, and an investigation report regarding the allegations was entered into CACI as a "substantiated" report. Although the Humphries were acquitted, and received judicial orders finding them "factually innocent," and the counts against them in the juvenile dependency matter were dismissed as "not true," the Los Angeles Sheriff's Department refused to reverse its report labeling the allegations as substantiated, and the report remained in the CACI.

"Following the decision in the Humphries case, the Legislature made significant changes to Penal Code section 11169 to put in place some procedural safeguards. The changes included changing the standard for the inclusion of report on CACI from "determined not to be unfounded" to "determined to be substantiated," giving persons listed on the CACI the right to a hearing to challenge the listing, and adding subdivision (b) to bar police and sheriffs' departments from forwarding reports to CACI. In addition to these statutory changes, a settlement decision in the case of Gomez v. Saenz put in place limited due process requirements regarding reports of abuse submitted to CACI by social service agencies. See Gomez v. Saenz Settlement: Training for Child Welfare Workers and Supervisors, available at
http://calswec.berkeley.edu/files/uploads/pdf/CalSWEC/Gomez_vs_Saenz_TraineeManual.pdf. These requirements resulted in the adoption of the DSS regulations now applicable when child welfare agencies submit reports onto CACI.

"Despite these changes, serious concerns remain regarding the rights of those reported to CACI under existing law. The standard for finding a report to be "substantiated" requires only that the investigator who conducted the investigation – not an independent reviewer – determine that it is "more likely than not" that the abuse occurred. Penal Code §11165.12.

The change to this standard would not have helped the Humphries, who were the subject of a report identified as "substantiated" by the Los Angeles Sheriff's Department. The DSS grievance procedures under the Gomez v. Saenz case also fail to protect the rights of those reported: these regulations have inadequate service requirements, fail to provide individuals with adequate notice of the details of the alleged incident, and fail to provide notice of the potential consequences of being listed on CACI, and create an unreasonable deadline for filing a challenge. The grievance procedures proposed in AB 1450 share these shortcomings. CACI remains a database of unproven allegations that can subject the persons listed to the stigma of being identified as child abusers as well as numerous practical consequences, and individuals listed have little recourse.

"The problems caused by the lack of adequate due process protections will be compounded if, as proposed in AB 1450, law enforcement agencies are allowed to submit reports onto CACI and are responsible for providing notice to those reported and grievance proceedings where requested. First, persons who are investigated by law enforcement for child abuse face potential criminal prosecution – with the potential for consequences including loss of liberty. The procedural protections provided must be greater than those provided when the stakes are not as high – the DSS procedures, inadequate even where child welfare agency reports are at issue, are even less adequate in this context.

'Second, persons who receive notice from a law enforcement agency that they have been reported to CACI are placed in an untenable position. If a person chooses to challenge the report in a grievance proceeding held before an official from the law enforcement agency, the law enforcement agency may then take the evidence that person submits and use it in their investigation or to support criminal prosecution. But if the person recognizes this risk and chooses not to challenge the listing on CACI, or chooses not to testify in the hearing, that person may then unjustly be listed on CACI as a child abuser, with all of the consequences that flow from that, with no further opportunity to have the report removed from the database.

"Because of the grave dangers to the rights of those who are named in allegations reported to CACI, any change to allow law enforcement to resume submitting reports to the system must incorporate adequate due process protections. As described above, the procedures proposed in AB 1450 are not adequate to protect the rights of individuals, and particularly not where there is law enforcement involvement. Without adequate due process protections, allowing law enforcement to report individuals to the CACI poses grave dangers to the rights of Californians who have not been convicted of any crime."

8) **Prior Legislation**:

a) AB 2005 (Santiago), of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 2005 was vetoed.

b) AB 1911 (Lackey), of the 2017-2018 Legislative Session, would have required every county to establish an on-line database to for specified agencies to track the reporting of substantiated allegations of child abuse and neglect by 2029. AB 1911 failed passage in this Committee.

c) AB 1707 (Ammiano), Chapter 848, Statutes of 2012, removed non-reoffending minors from the CACI after 10 years, and amended the CACI notice provisions.

d) AB 717 (Ammiano), Chapter 468, Statutes of 2011, amended the CACI provisions by including only substantiated reports and removing inconclusive and unfounded reports from CACI.

e) SB 1312 (Peace), Chapter 91, Statutes of 2002, would have made numerous changes to CACI including the purging of old reports. The provisions dealing with CACI were deleted before SB 1312 was chaptered.

f) AB 2442 (Keeley), Chapter 1064, Statutes of 2002, established the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and CACI.

g) AB 1447 (Granlund), of the 1999-2000 Legislative Session, would have made numerous changes to CACI including the purging of old reports. AB 1477 was never heard by the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Department (Sponsor)
California State Sheriffs' Association
Peace Officers Research Association of California
San Bernardino County Sheriff's Department

Opposition

American Civil Liberties Union of California
California Public Defenders Association

Two Private Individuals

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

Date of Hearing: January 14, 2020
Counsel: Matthew Fleming

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

AB 1599 (Cunningham) – As Amended January 6, 2020

SUMMARY: Permits inspection of peace officer or custodial officer personnel records under the California Public Records Act (CPRA) that pertain to a peace officer or custodial officer accused of sexual assault involving a member of the public when the peace officer or custodial officer resigns before the employing agency has concluded its investigation into the sexual assault.

EXISTING LAW:

1) Establishes the CPRA, and states 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; provides that, pursuant to the CPRA, all public records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code, §§ 6250 *et seq.*)

2) Provides that specified peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act, including Reports, investigation, or findings of:

   a) Incidents involving the discharge of a firearm at a person by an officer;

   b) Incidents involving use of force by an officer which results in death or serious bodily injury;

   c) Any record relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public; and,

   d) Any record relating to an incident where there was a sustained finding that an officer was dishonest relating to the reporting, investigation, or prosecution of a crime, or relating to the misconduct of another peace officer, including but not limited to perjury, false statements, filing false reports, destruction/falsifying/or concealing evidence, or any other dishonesty that undermines the integrity of the criminal justice system. (Pen. Code § 832.7, subd. (b)(1).)

3) Defines "sexual assault for purposes of a CPRA request as the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. Specifies

that for purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (Pen. Code § 832.7, subd. (b)(1)(B)(ii).)

4) Defines "member of the public" for purposes of a CPRA request as any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency. (Pen. Code § 832.7, subd. (b)(1)(B)(iii).)

5) Specifies that records to be released shall include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. (Pen. Code § 832.7, subd. (b)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's Penal Code currently enforces mechanisms for the public to request information related to an incent involving a Peace Officer. In 2018, our state passed landmark legislation to overhaul what information can be released and under what circumstances information may be withheld. Unfortunately, a loophole exists in the legislation that protects officers who abuse their power and are alleged to have sexually assaulted a member of the public. AB 1599 is a meritorious fix to ensure all information regarding sexual assaults on a member of the public is released, regardless if a law enforcement agency conducts an investigation or not on the incident. Sunlight is the best disinfectant and in order to protect our communities, we must have all the information available about who is patrolling them."

2) **The CPRA and SB 1421 (Skinner) Chapter 988, Statutes of 2018**: The CPRA was signed into law in 1968. The general purpose of the CPRA was to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*See City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Under the CPRA, all public records are generally open to public inspection unless a statutory exception exists which prohibits disclosure.

   Prior to 2018, CPRA notwithstanding, both police investigatory records and police personnel records were generally protected from public disclosure. Provisions of both the Penal Code and the Government Code, provided that investigatory records and police personnel records were confidential. SB 1421 (Skinner) Chapter 988, Statutes of 2018, loosened the protections of such records by enumerating several situations in which they were subject to disclosure under the CPRA. Specifically, SB 1421 provided that police records shall be subject to public disclosure if they involve the following: 1) incidents involving the discharge of a firearm by an officer; 2) incidents of deadly force or serious bodily injury by an officer;

3) incidents of sustained findings of sexual assault by an officer on the member of the public; or 4) incidents relating to sustained findings of dishonesty by a peace officer in specified circumstances.

3) **The Need for This Bill:** SB 1421 substantially increased the circumstances in which police investigatory and personnel records are available to the public, allowing access to records pertaining to the use of force by officers as well as incidents pertaining to sexual assault and dishonesty in certain circumstances. Under SB 1421, reports relating to the use of firearms and force are publicly available regardless of whether or not there is any sustained finding of misconduct against the officer. Reports relating to sexual assault or dishonesty, however, only become publicly available once there has been a "sustained finding" against the officer. This dichotomous approach leaves open possibility that officer can simply quit or resign from a position prior to a "sustained finding" of sexual assault or dishonesty, thereby circumventing the purpose and spirit of the transparency envisioned by SB 1421.

   One such example was addressed last March in the San Luis Obispo Tribune. (*See* Tribune Editorial Board, *Police Transparency Law Is Shielding Bad Cops – and State Lawmakers Need to Fix it*, The San Luis Obispo Tribune, March 13, 2019, available at: <https://www.sanluisobispo.com/opinion/editorials/article227419494.html>, [as of January 1, 2020].) According to that article, former Paso Robles Police Sergeant Christopher McGuire was accused of numerous incidents of sexual misconduct while on duty, including rape against a member of the public. (*Id.*) The Sheriff's Office for San Luis Obispo County recommended that the District Attorney move forward with criminal charges against McGuire, but the District Attorney ultimately declined to prosecute. (*Id.*) The Police Department also did not sustain any finding of misconduct against McGuire, instead allowing him to resign prior to the conclusion of an investigation into the incident. (*Id.*) As a result, when a request was made to review documents pertaining to the alleged sexual misconduct under the CPRA, the request was denied on the grounds that there had been no "sustained finding" against McGuire and therefore the records were not subject to disclosure. (*Id.*) This bill would clarify that in situations such as the one described in the Tribune article, the CPRA permits the public to access any records pertaining to the alleged sexual assault even in the absence of a sustained finding. It requires disclosure of records in cases where an officer resigns from a position prior to the conclusion of an investigation into alleged sexual assault.

   This bill treats an officer who resigns from his position prior to the conclusion of an investigation differently from an officer who remains until the investigation is complete. An officer who remains in their position and is cleared by the investigation will *not* have records publicly disclosed, but an officer who resigns prior to the conclusion of the investigation will have records that *are* subject to disclosure. This is true even if the investigation would ultimately find that the officer did not commit any wrongdoing. The bill therefore appears to provide officers with an incentive to remain in their position throughout the pendency of an investigation into alleged sexual assault on a member of the public.

4) **Argument in Support**: According to the *American Civil Liberties Union of California*: "After SB 1421 went into effect many news organizations across the state joined together in an unprecedented collaboration to publicize these instances of police misconduct.[] These stories uncovered hundreds of law enforcement officers that have committed crimes or serious misconduct yet remain employed as peace officers somewhere in the state. Often, these peace officers pleaded down to lesser crimes or resigned from their position prior to or

during an investigation. By making these instances of misconduct available to the public, we can hold our peace officers, and their employers, to an appropriate standard of professionalism and accountability.

"This bill seeks to expand current law to ensure the public has access to records involving accusations of sexual assault involving peace officers and members of the public so that peace officers cannot simply resign from their jobs during an investigation in order to evade transparency. For these reasons, the ACLU of California is pleased to support this legislation."

5) **Prior Legislation**: SB 1421 (Skinner) Chapter 988, Statutes of 2018 permitted the inspection of specified peace and custodial officer records pursuant to the CPRA including those records relating to an incident where there was a sustained finding that an officer engaged in sexual assault of a member of the public.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California News Publishers Association
California Public Defenders Association
Ella Baker Center for Human Rights

Opposition

None

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

Date of Hearing: January 14, 2020
Counsel: David Billingsley

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

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

VOTE ONLY

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

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

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

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

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

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

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

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

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

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

EXISTING LAW:

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

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

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

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

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

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

4) States that if a person is convicted of a violation of DUI and the offense occurred within 10 years of three or more separate violations of DUI, as specified, that resulted in convictions, that person can be punished as a felony or a misdemeanor, with a maximum of three years in the county jail pursuant to realignment (felony), or one year in the county jail (misdemeanor). (Veh. Code, § 23350, subd. (a).)

5) States that a person convicted of a violation of DUI or DUI w/injury as described above, shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. (Veh. Code, §§ 23550, subd (b), 23550.5, (subd. (d).)

6) States that the interest of any registered owner of a car that has been used in the commission of a violation of DUI or DUI with injury for which the owner was convicted, is subject to discretionary impoundment, except as specified, for not less than one nor more than 30 days. (Veh. Code, § 23594, subd (a).)

7) Specifies that if the DUI or DUI with injury offense occurred within five years of a prior offense for DUI, the prior conviction shall also be charged in the accusatory pleading and if admitted or found to be true, the court shall, except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 30 days. (Veh. Code, § 23594, subd (a).)

8) States that if the DUI or DUI with injury occurred within five years of two or more prior offenses which resulted in convictions of violations of DUI, the prior convictions shall also be charged in the accusatory pleading and if admitted or found to be true, the court shall,

except in an unusual case where the interests of justice would best be served by not ordering impoundment, order the vehicle impounded at the registered owner's expense for not less than one nor more than 90 days. (Veh. Code, § 23594, subd (a).)

9) States that a court may consider in the interests of justice factors such as whether impoundment of the vehicle would result in a loss of employment of the offender or the offender's family, impair the ability of the offender or the offender's family to attend school or obtain medical care, result in the loss of the vehicle because of inability to pay impoundment fees, or unfairly infringe upon community property rights or any other facts the court finds relevant. (Veh. Code, § 23594, subd (a).)

10) Specifies that no vehicle which may be lawfully driven on the highway with a class C or class M driver's license, as specified, is subject to impoundment as described above, if there is a community property interest in the vehicle owned by a person other than the defendant and the vehicle is the sole vehicle available to the defendant's immediate family which may be operated on the highway with a class C or class M driver's license. (Veh. Code, § 23594, subd (b).)

11) Specifies that upon its own motion or upon motion of the prosecutor in a criminal action for a violation of any of the following offenses, the court with jurisdiction over the offense, may declare the motor vehicle driven by the defendant to be a nuisance if the defendant is the registered owner of the vehicle. (Veh. Code, § 23596, subd. (a)(1).):

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

    b) A violation of Section DUI that occurred within seven years of two or more separate offenses of vehicular homicide while intoxicated, as specified, or DUI, as specified, or any combination thereof, that resulted in convictions.

    c) A violation of DUI with injury that occurred within seven years of one or more separate offenses of vehicular homicide while intoxicated, as specified, or DUI, as specified, or any combination thereof, that resulted in convictions.

12) States that upon the conviction of the defendant and at the time of sentence, the court with jurisdiction over the offense shall order a vehicle declared to be a nuisance to be sold, except as specified. (Veh. Code, § 23596, subd. (b)-(f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "If someone gets a DUI and pays their debt to society, then that's a mistake worthy of forgiveness. If someone gets 5 DUIs, then that's probably a character trait and they are a threat to our communities. They can still be rehabilitated, but first we need to make sure they are no longer a danger to themselves or to others."

2) **"Wobbler" Offenses:** A "wobbler" is a crime that can charged as, and result in a conviction for, a felony or a misdemeanor. A district attorney has the discretion to charge a "wobbler"

as a felony or a misdemeanor. If a defendant is charged with a felony for a crime that is a "wobbler" a judge has discretion, under certain circumstances, to reduce the charge to a misdemeanor, or sentence the defendant as a misdemeanor. The DUI crimes which are the subject of this bill are "wobblers." This bill would remove discretion from district attorneys and judges in specified DUI "wobbler" cases where the individual has one or more prior DUI related offense, by reclassifying the crimes as straight felonies.

3) **Current Law Provides District Attorneys and Judges Discretion to Set the Level of Offenses Described in This Bill as Felonies or Misdemeanors**: Under existing law, a DUI offense that does not involve injury is generally a misdemeanor. However, if an individual has a specified number of prior convictions within a 10 year period, or has a single prior conviction within 10 years of more serious DUI convictions, the individual can be charged with a felony, but such a charge is not mandated. Under those circumstances, the crime is a "wobbler." The district attorney making the decision to charge the case in criminal court has the option to charge such a crime as a felony or a misdemeanor. In evaluating whether to charge the case as a misdemeanor or felony, the district attorney typically looks at the extent and nature of the defendant's prior record and the facts of the current. If a "wobbler" is charged as a felony, the district attorney might consider other evidence presented by the defendant regarding his or her circumstances in mitigation, or efforts to address the problems underlying the crime, that might make it appropriate to settle the case by plea bargain, at a misdemeanor level. If the defendant was charged with a felony, and was convicted at trial, a judge would have discretion to evaluate all of the evidence to decide how to sentence the defendant. The court would look at the evidence presented at trial, the defendant's prior history, and any mitigating or aggravating evidence presented at a sentencing hearing to make the sentencing decision. Current law would provide the court discretion to sentence the defendant on the crime as a misdemeanor, if the circumstances warranted it. This bill would remove discretion and flexibility for these particular cases.

   The discretion provided under current law can also allow a Judge to establish an incentive for a defendant convicted of a wobbler DUI as a felony to perform well on probation in order to have the opportunity for the charge to be reduced to a misdemeanor in the future. A plea negotiation might include an agreement that the felony conviction can be reduced to a misdemeanor if a person completes a residential alcohol program, or meets other benchmarks designed to ensure that that the individual is addressing an alcohol problem. Flexibility in setting up such incentives is reduced if these offense are no longer "wobblers."

4) **This Bill Would Require the Court to Declare Vehicles a Nuisance, Subject to Seizure and Sale, Where Current Law Makes Such a Declaration Discretionary:** Current Law *allows* the court to declare a defendant's car a nuisance for specified DUI offenses. When the court declares the car a nuisance, the car is seized and sold after conviction, as specified. The seizure and sale of vehicles as punishment tends to disproportionately affect defendants on the lower end of the socio-economic scale. This bill would *require* the court to declare a defendant's car a nuisance under the circumstances where such a declaration is currently discretionary. In addition, this bill would expand the criteria under which the court must declare the car a nuisance. Mandatory punishments can be inconsistent with fairness because such punishments eliminate the flexibility to tailor consequences to match the facts of a particular case. Current law allows for judicial discretion to declare a vehicle nuisance, as specified, based on the facts before the court.

5) **Argument in Support**: According to the *Riverside Sheriffs' Association*, "AB 401 enhances penalties for those who have been convicted of multiple DUI offenses and would make the fifth DUI or a DUI committed within ten years of a previous felony DUI an automatic felony conviction.

"AB 401 would also expand vehicle impoundment terms, increasing the second and third DUI offense to longer time frames and would require the court to declare a car a nuisance, seize it, and destroy or sell it for specified repeated DUI convictions."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 401 would increase DUI penalties in several different ways. First, while a fourth offense DUI is an alternative felony-misdemeanor, this bill would provide that a fifth offense within 10 years would be a 'straight' felony punishable by imprisonment of up to three years pursuant to P.C. 1170(h). Second, it would also make a single DUI within ten years of a prior felony DUI a 'straight' felony, instead of an alternative felony-misdemeanor, which is the current law. Third, AB 401 will result in more vehicles being impounded for a longer period of time. Fourth, AB 401 provides that a third DUI could trigger vehicle forfeiture.

"AB 401 would cost taxpayers more money because felonies are more expensive to prosecute. Felonies require preliminary hearings, and typically more court appearances than your ordinary misdemeanor. Felonies usually involve better trained and more experienced prosecutors and public defenders, who are consequently better paid, a cost ultimately borne by the taxpayer. The greater consequences of a felony mean that more of them proceed to trial, necessitating the expense of court personnel and jurors. If convicted, much more expensive incarceration will be the result, and our jails are already overcrowded.

"AB 401 is modeled on a failed policy paradigm of increasing penalties and mass incarceration. The current trend in correctional practice in this state is to emphasize non-custodial options rather than longer jail terms.

"AB 401 limits judicial discretion. While many individuals who acquire a fifth DUI or a first DUI within ten years of a prior felony DUI might very well receive a felony sentence, there is no compelling reason to remove from the sentencing judge the option of imposing a misdemeanor sentence in the appropriate case. The law does not have to be rigid, and impose a 'one size fits all' brand of justice. A wise judge may wish to also give a defendant a motive to 'earn' a misdemeanor by putting the individual on felony probation for a number of years with the object of avoiding the permanent mark of 'ex-felon' by scrupulously observing the terms of probation, including up to a year in jail if appropriate, and demonstrating that the individual is rehabilitated. Trusting our judges and preserving sentencing flexibility that can be shaped to the unique circumstances of each case benefits both society and the defendant.

"AB 401 would make vehicle forfeiture mandatory. Currently, judges have discretion to order vehicles driven during a DUI to be forfeited if the current offense is a vehicular manslaughter or a second offense within seven years of a prior felony DUI. This bill would expand the period from seven years to ten, and would add a third DUI, without any felony priors, as an additional triggering offense. Most importantly, this bill would remove the discretion that the sentencing judge currently enjoys to avoid forfeiting the vehicle if the interests of justice so dictate. Many of the same objections raised as to the third provision of this bill would be applicable here as well. While many vehicle will properly be forfeited, we

should not have a rigid system that cannot be responsive to the myriad variables of each case. We have many wise judges who should be trusted to impose justice firmly, but tempered with mercy when justice demands. Among other things, the judge should be able to consider how long ago the prior offenses were and whether there are any aggravating circumstances in the current case. The judge should also be able to consider any extraordinary and disproportionate hardships such forfeiture would impose on the defendant and their family.

"AB 401 is unnecessary, expensive, and rigid. For the law to be respected it must be flexible enough to respond to the needs of justice in each case, and that requires making it evenhanded and vesting our judges with discretion. "

7) **Related Legislation**:

a) AB 974 (Cooley), would authorize a court to order participation in an enforced sobriety program as a condition of pretrial release for a person who has been charged with a driving under the influence offense within 10 years after a previous driving under the influence conviction.

b) AB 1713 (Burke), would make it a crime to drive a car with a blood alcohol concentration (BAC) of .05 or more, by lowering the current limit from .08 BAC.

8) **Prior Legislation**:

a) AB 2834 (Fong), Legislative Session of 2017-2018, would have specified that a conviction for DUI that was punished as a felony, constitutes a felony for the purpose of determining whether the person has been convicted of a separate violation or a prior violation, even if the judge exercised his or her discretion to subsequently reduce the offense to a misdemeanor. AB 2834 failed passage in the Assembly Public Safety Committee.

b) SB 67 (Bates), of the 2017-18 Legislative Session, would have a required a felony conviction for driving under the influence or driving under the influence causing injury, to remain a felony for purpose of determining whether the person has been convicted of a separate violation or a prior violation, even if the conviction was subsequently reduced to a misdemeanor. SB 67 was held in the Senate Appropriations Committee.

c) AB 2690 (Mullin) Chapter 590, Statutes of 2014, authorized enhanced penalties for a current conviction for driving under the influence or driving under the influence causing injury that occurs within 10 years of a separate conviction that was punished as a felony for driving under the influence, driving under the influence causing injury, or vehicular manslaughter with gross negligence.

d) AB 1601(Hill) Chapter 301, Statutes of 2010, permits a court to order a 10-year revocation of a driver's license for a person convicted of three or more separate driving under the influence (DUI) offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

California Peace Officers Association
California Police Chiefs Association
City of Manteca
Crime Victims United of California
Modesto Police Department
Ripon Police Department
Riverside Sheriffs' Association
San Joaquin County Sheriff
Stanislaus County Sheriff's Office

Oppose

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

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

Date of Hearing: January 14, 2020
Counsel: Sandy Uribe

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

AB 582 (Eduardo Garcia) – As Amended January 6, 2020

VOTE ONLY

SUMMARY: Increases the penalties for "hit and run" resulting in death to another. Specifically, **this bill**: Increases the punishment for fleeing the scene of an accident resulting in the death of another from a "wobbler" having a maximum punishment of four years in state prison, to a "wobbler" having a maximum punishment of three, four, or six years in the state prison.

EXISTING LAW:

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

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

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

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

5) States that a person who flees the scene of an accident after committing gross vehicular manslaughter or gross vehicular manslaughter while intoxicated, upon conviction for that offense, shall be punished by an additional term of five years in the state prison. This additional term runs consecutive to the punishment for the vehicular manslaughter. (Veh. Code, § 20001, subd. (c).)

6) Defines "gross vehicular manslaughter" as the unlawful killing of a human being, in the driving of a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or with driving a vehicle in the commission of a lawful act which might produce death, in an unlawful act, and with gross negligence. Gross vehicular manslaughter is punishable by either imprisonment in a county jail for not more than one

year, or in the state prison for two, four, or six years. (Pen. Code, § 191, subd. (c)(1).)

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

   "The purpose of [the statute] is to prevent the driver of an automobile from leaving the scene

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

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

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

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

CDCR's November 2019 monthly report on the prison population notes that the in-state adult institution population is currently 114,623 inmates, which amounts to 134.7% of design capacity. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2019/12/Tpop1d1911.pdf.)

Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

CDCR has informed this Committee that from November 2018 through October 2019 there were 97 new admissions for the hit and run resulting in permanent, serious injury or death. Further, the total number of inmates who are serving a sentence for a conviction for hit and run causing death or permanent serious injury is 315. As noted above, this bill increases only the punishment for hit and run causing death. Because, as drafted, the statute does not distinguish between permanent serious injury or death, it not possible to tell exactly how many of the new admissions to CDCR in the past year involved hit and run resulting in death.

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

maximum of four years and/or a fine of $1,000-$10,000.

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California District Attorneys Association
City of Fresno, District Attorney
Fresno County Sheriff
Fresno Deputy Sheriff's Association
Fresno Police Department
Fresno Police Officers Association
Mothers Against Drunk Driving

Oppose

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

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

Date of Hearing: January 14, 2020
Counsel: David Billingsley

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

AB 884 (Melendez) – As Introduced February 20, 2019

VOTE ONLY

SUMMARY: Makes any person convicted of committing a lewd act upon a child under 14 years of age, a tier 3 offender, subject to lifetime registration as a sex offender.

EXISTING LAW:

1) Establishes the Sex Offender Registration Act (the Act). (Pen. Code, § 290, subd. (a).)

2) Requires persons convicted of the following offenses to register under the Act as a sex offender with law enforcement and with any school they attend, while residing, working, or studying in California:

   Murder, Kidnapping and Assault, committed with the intent to commit specified offenses; Sexual Battery; Rape; Aiding and abetting a rape; Pimping or pandering a minor; Child Procurement; Aggravated sexual assault of a child under 14 years of age; Contributing to the delinquency of a minor with lewd or lascivious conduct; Incest; Sodomy; Lewd or lascivious act with a minor; Oral Copulation; Showing obscene material to minors; Contacting a minor with the intent to commit certain felonies; Arranging a meeting with a minor for lewd purposes; Continuous sexual abuse of a minor; Engaging in sodomy with a child 10 years or younger; Sexual penetration by force or fear; Child pornography laws; Indecent exposure; Annoying or molesting a child; Solicitation to commit a sex crime; Any statutory predecessor that includes all elements of one of the above-mentioned offenses; and Attempt or conspiracy to commit any of the above-mentioned offenses. (Pen. Code, §§ 290, subds. (b) – (c).)

3) Implements a three-tiered sex offender registration as of January 1, 2021. (Pen. Code, § 290 subds. (d) – (g).)

4) Provides specifically that a person required to register under the Act for an adult court conviction is subject to lifetime registration (tier three), if any of the following apply:

   a) Following conviction of a registerable offense, the person was subsequently convicted of a violent registerable felony sex offense in a separate proceeding;

   b) Following conviction of a registerable offense, the person was convicted of a violent felony, committed as a result of sexual compulsion or for purposes of sexual gratification, for which he or she was ordered to register;

   c) The person was committed to a state mental hospital as a sexually violent predator;

d) The person was convicted of any of the following: (Pen. Code, § 290, subd. (d)(3).)

i) murder while attempting to commit or committing a specified sex offense;

ii) kidnapping with the intent to commit a specified sex offense;

iii) assault with intent to commit a specified sex offense or commission of the same act(s) in the course of a first degree burglary;

iv) pimping a minor;

v) pandering with a minor;

vi) procurement of a child under age 16 for lewd or lascivious acts;

vii) abduction of a minor for purposes of prostitution;

viii) aggravated sexual assault of a child;

ix) lewd or lascivious acts on a child by force, violence, duress, menace, or fear

x) lewd or lascivious acts on a child under age 14 or by a caretaker upon a dependent person by force or violence, or lewd acts on a child 14 or 15 years of age by a person at least 10 years older than the child;

xi) sending harmful matter to a child that depicts a minor(s) engaged in sexual conduct;

xii) contacting a minor with the intent to commit a specified sex offense other than sodomy, oral copulation, or sexual penetration with a person under age 18;

xiii) contacting a minor with the intent to expose oneself or engage in lewd or lascivious behavior;

xiv) continuous sexual abuse of a child;

xv) sex offense with a child 10 years of age or younger;

xvi) solicitation of rape, sodomy, or oral copulation by force or violence, or solicitation of other specified sex offenses; and,

xvii) any offense for which the person is sentenced to a life term under the habitual sex offender law.

e) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO) is well above average risk at the time of release into the community;

f) The person is a habitual sex offender;

g) The person was convicted of lewd or lascivious acts on a child under age 14 in two separate proceedings brought and tried separately;

h) The person was sentenced to 15 to 25 years to life for an offense under the habitual sex offender law;

i) The person is required to register as a mentally disordered sex offender;

j) The person was convicted of specified felony human trafficking offenses;

k) The person was convicted of felony sexual battery by restraint or while the victim was unconscious of the nature of the act;

l) The person was convicted of rape of a child, or by force or violence, or where the victim was prevented from resisting by an intoxicating or controlled substance, or where the victim was unconscious of the nature of the act;

m) The person was convicted of spousal rape by force or violence;

n) The person was convicted of rape in concert;

o) The person was convicted of contributing to the delinquency of a minor involving lewd or lascivious conduct;

p) The person was convicted of sodomy by force or violence, or in concert, or where the victim was unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

q) The person was convicted of oral copulation upon by force or violence, or in concert, or where the victim is unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

r) The person was convicted of an act of sexual penetration by force or violence, or where the victim is unconscious of the nature of the act, or where the victim is prevented from resisting by an intoxicating or controlled substance, or where with a child under age 14 and who was more than 10 years younger than the person;

s) The person was convicted of child pornography (other than misdemeanor possession of child pornography).

5) Provides that unless a person is subject to registration under tier three as specified above, a person required to register under the Act for an adult court conviction of a serious or violent or other specified felony sex offenses must register for a minimum of 20 years (tier two). (Pen. Code, § 290, sub. (d)(2).)

6) Provides that unless a person is subject to registration under tier two or tier three as specified above, a person required to register under the Act for an adult court conviction of a misdemeanor or non-violent, non-serious sex offense must register for a minimum of 10 years (tier one). (Pen. Code, § 290, sub. (d)(1).)

7) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her minimum registration period. (Pen. Code, § 290.5, subd. (a).)

8) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier two or tier three to petition to be removed from the sex offender registry before the expiration of his or her registration period, if specified criteria are met. (Pen. Code, § 290.5, subd. (b).)

9) Gives the judge discretion to order sex offender registration for any offense if it finds that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. (Pen. Code, § 290.006.)

10) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony of the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subds. (a) and (b).)

11) States that a person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)

12) Provides that person who commits any lewd or lascivious act, including any of the acts upon a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code, § 288, subd. (b)(1).)

13) Specifies that person who commits any lewd or lascivious act, including any of the acts upon a child, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code, § 288, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under the new tiered registration system for sex offenders, predators that molest 14 or 15 year olds are required to register for life, while those who molest young children (under 14) only have to register for 20 years.

   "AB 884 cleans up the registration requirement for adults who commit lewd acts on children under the age of 14 from tier 2 status, registration for 20 years, to tier 3 status, registration for life. This is one of the most common sex crimes and the most common sex offense against children, in which we cannot allow registrants to fall out of the system. In California from 2014 to 2018, there were over 9,000 convictions of molesting a child under the age of 14, which doesn't including all those that went unreported and not convicted.

"Requiring lifetime registration for those who molest a child under the age of 14, this will protect victims by mandating that child molesters be registered for life, and that their information will always be made available to law enforcement."

2) **The Sex Offender Registration Act**: California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 278.)

   In enacting the Sex Offender Registration Act in 2006 (P.C. 290 et seq.), the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders. (9 Witkin Cal. Crim. Law, *supra*, § 136.) The Act includes a lifetime registration requirement for persons convicted of or adjudicated for specified sex offenses. (See Pen. Code, § 290 et seq.) It also created a "standardized, statewide system" and a "comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities." (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1179.) These statutes regulate numerous aspects of a sex offender's life including restricting the places a sex offender may visit and the people with whom he or she may interact. (*Ibid.*)

3) **California Has Established a Tiered System of Registration Which Will Go Into Effect on January 1, 2021:** SB 384 (Wiener) Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.

   "The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement." (Cal. Sex Offender Management Board, *Recommendations Report* (Jan. 2010) p. 5 <http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf> [as of July 1, 2017].)

   In a 2010 report, the CASOMB made several key recommendations, including the recommendations below:

   • California should concentrate state resources on more closely monitoring high and-moderate risk sex offenders. A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.

   • Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to

higher-risk offenders.

(*Recommendations Report, supra*, at p. 6.)

At the time of the report, California had the largest number of registered sex offenders of any state in the United States. This large number was attributed "to the large overall population of the state, the length of time California ha[s] been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration. (*Recommendations Report, supra*, at p. 50.)

The CASOMB noted that California is one of the few states that has lifetime registration for all sex offenders. "On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime." (*Recommendations Report, supra*, at p. 50.)

Specifically, the CASOMB recommended that:

> • Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created[;]
>
> • Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life[;]
>
> • A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:
>
> Whether the sex offense was violent[;]
>
> Whether the sex offense was against a child[;]
>
> Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction[; and,]
>
> Whether the person was civilly committed as a sexually violent predator[.]

(*Recommendations Report, supra*, at p. 51.) The CASOMB "recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism[.]"

The proposed changes to California law take into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender,

> and whether the offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses....

(*Recommendations Report, supra*, at p. 56.)

In its 2014 report, the CASOMB noted there were nearly 100,000 registrants in California, as a result of California's "universal lifetime" registration for persons convicted of most sex offenses. "California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending." (Cal. Sex Offender Management Board, *A Better Path to Community Safety – Sex Offender Registration in California, "Tiering Background Paper"* (2014) p. 3 <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf> [as of July 2, 2017].)

According to the CASOMB: "Effective policy must be based on the scientific evidence. Research on sex offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests. (*Tiering Background Paper, supra*, at p. 4.) The CASOMB also noted the unintended consequences of lifetime registration. "These consequences include serious obstacles to finding appropriate housing – or any housing; obstacles to finding employment; obstacles to developing positive support systems; obstacles to developing close relationships; and obstacles to reintegrating successfully into communities." (*Ibid.*)

In line with its 2010 report, the CAOMB's 2014 report proposed a new registration system that would take into account the following considerations:

> • A tiered system of registration should be introduced so that the length and level of registration matches the risk level of the offender.
>
> • In the future, all those convicted of a sex offense which currently requires registration would continue to be required to register. The list of registrable sex crimes would not change.
>
> • The duration of registration would be [sic] no longer be for life for each and every registrant, no matter what the type of crime or the risk level.
>
> • Only high risk offenders, such as kidnappers, sexually violent predators and selected high risk offenders would be required to register for life.
>
> • The Megan's Law web site would display specified higher risk offenders.
>
> • Local law enforcement would have the ability to notify the public about any registered sex offender posing a current risk to the public.

(*Tiering Background Paper, supra*, at p. 7.)

In January of 2011, the Assistant Director of the California Research Bureau (CRB) testified before this committee after the CRB had examined: (a) registration requirements, (b) tiered registration, (d) the duration of registration, and (d) best practices and the overall cost-effectiveness of sex offender registration requirements. Specifically, as the Assistant Director testified, the CRB had also examined how other states have implemented registration requirements:

> In our more detailed review of sex offender registration practices in other states, we selected states bordering California (Arizona, Nevada, and Oregon) as well as states with large populations and/or similar demographic characteristics to California: Florida, New Jersey, New York, Pennsylvania and Texas. Of the states we reviewed, only one, Florida, requires lifetime registration for all sex offenders. The others have tiers for registration – meaning that the offenders register for ten, 15 or 20 years for first-time offenses, and face lifetime registration for more violent or repeat offenses.
>
> Some of the states do allow registrants to petition for removal from the list, generally after a period of not having committing any registrable offenses. In contrast, California requires lifetime registration for all offenses, and only allows people convicted of certain misdemeanor sex offenses to apply for relief via a certificate of rehabilitation with a trial court.

(<http://www.library.ca.gov/crb/docs/Testimony_to_Public_Safety_Comm.1.25.2011.pdf >[as of July 1, 2017].)

4) **Under the Tiered Registry, the Crimes Which Are the Subject of This Bill Would Fall Under Tier 2, 20 Year Period of Registration:** This bill addresses the crime of a lewd act on a child under the age of 14 that does not involve the use of force, violence, or duress. Under the tiered registration law, conviction of such an offense would place the individual in Tier 2, 20 year minimum registration. This bill would make conviction of such a crime, Tier 3, registerable for life. SB 384 (Wiener), which established tiered registration, was enacted in 2017. The tiered system of registration will go into effect on January 1, 2021.

5) **Argument in Support**: According to the California Police Chiefs Association, "Existing law only requires lifetime registration if the victim is 14 or 15 years of age; however, if the victim is younger than 14 years of age, the offender is only required to be registered for 20 years – this is unfair to the victims younger than the age of 14. AB 884 protects victims by mandating child molesters be registered for life and allows law enforcement to continually have access to this information."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "In 2017, the California legislature passed historic reform to the 290 registration system, creating three tiers of registration and enumerating the criminal offenses that would fall into each tier. The impetus for this reform was to make the sex offender registry more humane, accurately tailored, and effective. The reform was supported by a wide variety of interest groups, including District Attorneys, law enforcement organizations, Public Defenders, and civil liberties groups. It was also extremely careful in its implementation, only taking effect in 2021.

"AB 884 seeks to undercut this reform two years before it is implemented. It would effectively move 40,000 people from Tier 2 (20 years registration) to Tier 3 (lifetime registration). Though the bill only makes changes for one category of offense, it would substantially weaken The Tiered Registry Law.

"The Tiered Registry Law was a recognition that not all sex offenses are the same and they should not be treated in an identical manner. The law's second tier, out of which the 40,000 people who will be affected by this bill would be moved, requires registration for 20 years after the date of conviction. This 20 year requirement, carries with it all of the burdens and collateral consequences that sex offender registry entails, but it allows for some relief after an appropriate amount of time. At the time that the Tiered Registry Law was passed, there was a fulsome debate about which offenses should be assigned to which tiers. AB 884 is an attempt to rehash that debate and change a fundamental aspect of that law's promised reform.

"AB 884 would upset the careful balance that went into the passage of the Tiered Registry Law in 2017. It would deny relief to a substantial number of Californians, even after 20 years of onerous registration. It is a misguided step backwards."

7) **Related Legislation**:

a) AB 135 (Cervantes), would make it a crime to contact or communicate with a minor, or attempt to contact or communicate with a minor, as specified, with the intent to commit human trafficking of the minor. AB 135 has been referred to the Assembly Appropriations Committee Suspense File.

b) AB 444 (Choi), would require a person convicted of who solicits, or who agrees to engage in, an act of prostitution with another person who is a minor, to register as a sex offender. AB 444 is awaiting hearing the Assembly Public Safety Committee.

c) SB 145 (Wiener), would authorize a person convicted of certain offenses involving minors to seek discretionary relief from the duty to register if the person is not more than 10 years older than the minor and if that offense is the only one requiring the person to register. SB 145 is set for hearing in the Senate Public Safety Committee on April 9, 2018.

8) **Prior Legislation**:

a) SB 384 (Wiener), Chapter 541, Statutes of 2017, established a three-tiered sex offender registry, requiring the most serious sex offenders (tier 3) to register for life, requiring tier 2 sex offenders to register for 20 years, and requiring tier 1 sex offenders to register for 10 years.

b) AB 484 (Cunningham), Chapter 526, Statutes of 2017, added rape by fraud and rape by authority of a public official to the list of offenses that require registration as a sex offender.

c) SB 757 (Glazer), of the 2017-2018 Legislative Session, would have required a person convicted of prostitution with a minor to register unless the court finds that the defendant had reason to believe the victim was not a minor, was misled about the victim's age, or

was less than three years older than the victim at the time of the solicitation. SB 757 is pending referral from the Assembly Rules Committee. SB 757 was held in the Assembly Public Safety Committee.

d) AB 1912 (Achadjian), of the 2015-2016 Legislative Session, would have required a person convicted of soliciting a minor, who the person knew or reasonably should have known, was both a minor and a victim of human trafficking to register as a sex offender for a period of five years after a first conviction, 10 years after a second conviction, and 20 years after a third or subsequent conviction. AB 1912 failed passage in the Assembly Public Safety Committee.

e) AB 733 (Chavez), of the 2015-2016 Legislative Session, would have required sex offender registration for a person convicted of the offense of solicitation of a minor. AB 733 failed passage in the Assembly Public Safety Committee.

f) SB 303 (Morell), of the 2017-2018 Legislative Session, would have added an additional term to the sentence of a convicted human trafficker if it was pled and proved that the offense involved a victim who was under the age of 16. SB 303 died in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Family Council
California Police Chiefs Association
Riverside Sheriffs' Association

Oppose

Alliance for Constitutional Sex Offense Laws
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Building Opportunities for Self-Sufficiency
California Attorneys for Criminal Justice
California Public Defenders Association
California Sex Offender Management Board
East Bay Community Law Center
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Root and Rebound Reentry Advocates
Rubicon Programs

96 Private Individuals

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Date of Hearing: January 14, 2020
Counsel: Matthew Fleming

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

AB 1422 (Gipson) – As Introduced February 22, 2019

PULLED BY AUTHOR

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