California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, July 11, 2023
9 a.m. -- State Capitol, Room 126

PART II

SB 442 (Limón) – SB 883 (Comm. on Public Safety)

Date of Hearing: July 11, 2023
Counsel: Liah Burnley

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

SB 442 (Limón) – As Amended May 18, 2023

SUMMARY: Expands misdemeanor sexual battery to include a person who for the purpose of sexual gratification or sexual abuse causes another, against their will, to masturbate or touch an intimate part of either of those persons or a third person.

EXISTING LAW:

1) Provides that any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched, and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (a).)

2) Provides that any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (b).)

3) Provides that any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (c).)

4) Provides that any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (d).)

5) Provides that a violation of any of the above-listed offenses is a wobbler, punishable either as a misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or as a felony by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subds. (a)-(d).)

6) Provides that, for the above-listed offenses, "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense. (Pen. Code, § 243.4, subd. (f).)

7) Provides that in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).)

8) States that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding six months, or by both. (Pen. Code, § 243.4, subd. (e)(1).)

9) Provides that "touches," for the purpose of the above-listed offense, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)

10) Defines "intimate part" as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. (Pen. Code, § 243.4, subd. (g)(1).)

11) Provides that a battery is any willful and unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

12) Provides that a battery is a misdemeanor, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Pen. Code, § 243, subd. (a).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Current law defines a misdemeanor violation of sexual battery as the unwanted touching of the intimate body part of another. Missing from this definition of misdemeanor sexual battery is the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator. This gap in the law is creating real world examples of sexual abuse, where no charges of sexual battery can be brought.

   "In one recent incident, an employer took an employee's hand against her will and placed it on his groin area over his clothes. Because the physical contact was done by the victim's hand- not the perpetrators- the perpetrator could not be charged with misdemeanor sexual battery. Under current law, the perpetrator could only be charged with simple battery, the same charge that would apply to a simple push on the shoulder. This change ensures that all individuals that seek to commit sexual battery are held accountable. Victims feel no less violated when their hands are forced to touch another person than when another person touches the victim."

2) **Sexual Battery**: The sexual battery statute, Penal Code section 243.4 includes five subdivisions (a)-(e) that define sexual battery based on the defendant's conduct and set the punishment for each respective situation.

Subdivisions (a), (b), and (c) cover situations where the defendant touches the intimate parts of the victim. These subdivisions require that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act because of a fraudulent representation. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310.) Subdivisions (a), (b), and (c) are wobblers., i.e., either a felony or misdemeanor. (*People v. Dayan* (1995) 34 Cal.App.4th 707, 715, fn. 4; Pen. Code, § 17.)

Subdivision (e) is misdemeanor sexual battery. This subdivision covers situations where the defendant touches the intimate parts of the victim. For misdemeanor sexual battery, unlike subdivisions (a), (b), and (c), there is no requirement that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act. (*People v. Dayan* (1995) 34 Cal. App. 4th 707, 715-716.) These differences make the misdemeanor definition broader than the wobbler definition and as such, subdivision (e) proscribes a wider variety of conduct than subdivisions (a), (b), and (c).

To be guilty of either a wobbler sexual battery under subdivisions (a), (b), (c), or misdemeanor sexual battery under subdivision (e) the defendant must have touched the victim's intimate parts, not the other way around. (*People v. Elam* (2001), *supra,* at p. 310; *In re Gustavo* (1989) 214 Cal. App. 3d 1485, 1498.)

Subdivision (d) proscribes conduct different from the other sexual batteries. Subdivision (d) covers the situation where the defendant causes the victim to masturbate or touch the intimate part of the defendant or another person. Subdivision (d) is a wobbler, and like the other wobblers, subdivision (d) requires that the victim is unlawfully restrained or institutionalized for medical treatment, and the "touching" requires the victim to touch the skin of the defendant or another person's intimate parts. (Pen. Code, § 234.4, subds. (d) & (f); *People v. Elam* (2001), *supra,* at p. 310; see also CALCRIM No. 953.)

3) **Unlawful Restraint**: As discussed above, wobbler sexual battery under subdivision (a) [defendant touching the victim] and subdivision (d) [victim touching the defendant or another], both require that the victim be unlawfully restrained. Although the statute does not define "unlawful restraint," the term has been the interpreted by case law.

In *People v. Alford* (1991), 235 Cal.App.3d 799, the court explained that the purpose of the sexual battery statute is to provide appropriate punishment for sexually abusive conduct that is physically traumatic and psychologically terrifying, even though it falls short of rape. Accordingly, the statute allows for prosecution when a touching occurs while the person is unlawfully restrained. (*Ibid.*) Thus, the term "unlawful restraint" can be viewed as distinguishing the "nonsexual physical element" of sexual battery from the more wanton "force, violence, or fear element of rape." (*Ibid*; see also, *People v. Arnold* (1992) 6 Cal.App.4th 18, 26.) Unlawfully restrained means the "nonsexual physical element" that is something more "than the mere exertion of physical effort necessary to commit the prohibited sexual act." (*Ibid.*) "This may be because the essence of the offense is seen as the touching." (*People v. Pahl* (1991) 226 Cal.App.3d 1651, 1660, fn. 4.)

In *People v. Arnold* (1992) 6 Cal.App.4th 18, the defendant contended that "unlawful restraint" requires a "significant limitation" on the personal liberty of the victim. The court disagreed, holding that a person is unlawfully restrained when their liberty is being controlled by words, acts, or authority of the perpetrator aimed at depriving the person's liberty, and

such restriction is against the person's will. (*Id.*, at p. 26.) "[F]or example, the victim's unwillingness may be implied if grabbed by a stranger who proceeds to improperly touch the victim … .Such a restraint is clearly unwelcome and unlawful." (*Id.*, at p. 28.)

In *People v. Grant* (1992) 8 Cal.App.4th 1105, 1111, the court explained that there is no requirement that unlawful restraint include physical restraint or that it include force or threat of force with personal violence. Conduct that forces the victim to remain where they do not voluntarily wish to be constitutes unlawful restraint within the meaning of the statute. (*Ibid.*) The court explained, "There are many situations where one is compelled, i.e., forced, to do something against one's will but the compulsion does not involve personal violence or threats of personal violence. This is especially true when the person involved in the compulsion is an authority figure or posing as a person in authority. The force is a psychological force compelling the victim to comply with the orders of the authority figure." (*Id.*, at 1112.)

In sum, "a person is unlawfully restrained when his or her liberty is being controlled by words, acts, or authority of the perpetrator aimed at depriving the person's liberty, and such restriction is against the person's will; The unlawful restraint required for [sexual battery] is something more than the exertion of physical effort required to commit the prohibited sexual act." (*People v. Pahl*, *supra*, Cal.App.3d 1651; *People v. Grant*, *supra,* 8 Cal.App.4th 1105, 1111; *People v. Arnold, supra*, 6 Cal.App.4th 18, 28.)

Many unpublished state court decisions that have applied this rule, demonstrate its relatively low threshold. For example:

In *People v. Knight* (Aug. 29, 2018, No. A150989) ___Cal.App.5th___ [2018 Cal. App. Unpub. LEXIS 5912, at *20-21], a sexual battery conviction was upheld where the defendant grabbed the victim by the hip restricting her freedom of movement. The court explained that the defendant used more physical effort than required to commit the prohibited touching. (*Ibid.*)

In *People v. Hughey* (Jan. 12, 2018, No. A150114) ___Cal.App.5th___ [2018 Cal. App. Unpub. LEXIS 259, at *40], the court upheld a sexual battery charge where the defendant entered the victims hotel room uninvited and "shushed" the victim before touching her. The court found that there was unlawful restraint because the defendant's words and acts were "something more . . . than the mere exertion of physical effort necessary to commit the prohibited sexual act." (*Ibid.*)

In *In re J.V.* (Sep. 10, 2009, No. F056619) ___Cal.App.4th___ [2009 Cal. App. Unpub. LEXIS 7301, at *17], the court determined there was unlawful restraint where the defendant pushed the victim onto the couch and subjected her to unwanted sexual touching.

In *People v. Krause* (Apr. 19, 2007, C050840) ___Cal.App.4th___ [2007 Cal. App. Unpub. LEXIS 3140, at *9-10], a sexual battery conviction was upheld where the defendant was kneeling on the bed next to the victim and held the victim's hand on his intimate parts. The court determined there was unlawful restraint because the victim was unable to free her hand from the defendant's intimate parts. (*Ibid.*)

This bill would allow situations, where a defendant causes another person to touch the intimate parts of the defendant or another person, to be prosecuted as a misdemeanor, even where there is no unlawful restraint. This bill would make criminals of individuals who did not touch the intimate parts of another person, and did not take any action to control, restrain, or deprive the person of their liberty, and where the person has the freedom to refuse the touching or leave the situation. Should the Legislature allow individuals to be convicted of a sexual battery, *when the defendant has not touched the victim's intimate parts* and the victim is not unlawfully restrained and *at liberty to not touch the intimate parts of the defendant or another person*?

4) **The Conduct is Already a Crime under Existing Law**: According to the author, the purpose of this bill is to criminalize conduct "where a perpetrator causes the victim to touch an intimate body part of the perpetrator." However, at least one appellate court has confirmed that a sexual battery occurs when any person, causes another, against that person's will, to masturbate or touch the intimate parts of the defendant or another person. (*People v. Reeves* (2001) 91 Cal.App.4th 14, 50.) In *Reeves*, the court determined that the statute does not require the "cause" of the touching to be "by command, authority or force" but it means more broadly to "to be the cause of; to effect, bring about, produce, induce, [or] make." (*Ibid.*) "This is satisfied when the defendant actions "induced" or "brought about" or "occasioned" the touching." (*Ibid.*) Thus, the offense of sexual battery covers the situation where a defendant "causes" the victim to touch the intimate body part of the defendant or another person. This offense can be prosecuted either as a misdemeanor or as a felony under existing law. (Pen. Code, § 243.3, subd. (d).)

The sponsor of this bill, writing in support, describes an incident "where the perpetrator, an employer, took an employee's hand against her will and placed it on his groin area over his clothes." The sponsor contends that, "[b]ecause the physical contact was done by the victim's hand- not the perpetrators- the perpetrator could not be charged with misdemeanor sexual battery."

However, based on these facts, this conduct could be charged as either felony or misdemeanor sexual battery under Penal Code section 243.4 subdivision (d). As discussed above, sexual battery of this nature requires that: (1) the defendant unlawfully restrained the victim; (2) the defendant caused the victim to touch the intimate part of the defendant or someone else; and (3) the touching was done against the victim's will. (Pen. Code, § 234.4, subd. (d); CALCRIM No. 953.) The example raised by the bill's sponsor meets all of the requisite elements of the offense:

> (1) The victim was unlawfully restrained [i.e., the defendant took the victim's hand thereby controlling the victim's liberty. The hand taking is a "nonsexual physical act" that is something more than the mere exertion of physical effort necessary to commit the prohibited sexual touching (*See, e.g., People v. Arnold* (1992) 6 Cal.App.4th 18, 28 [explaining that being "grabbed by a stranger" "is clearly unwelcome and unlawful"].)];
>
> (2) The victim's hand touched the employer's groin [i.e., an intimate part of the defendant]; and,
>
> (3) The touching was against the victim's will.

Further, based on the example provided by the sponsor of the bill, in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant would be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).) In addition to sexual battery, this offense could also be charged as battery, a misdemeanor, which is any "willful and unlawful use of force or violence upon the person of another." (Pen. Code, §§ 242 & 243.)

Accordingly, this bill is unnecessary.

5) **Argument in Support**: According to the *Ventura County District Attorney*, "What is missing from the definition of misdemeanor sexual battery is the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator or other person, such as grabbing the victim's hand and placing it on the perpetrator's groin. This gap in the law is creating real world examples of sexual abuse where perpetrators remain unaccountable for what is objectively offensive and criminal behavior.

"This gap in the statute warrants correction to ensure that all individuals that seek to commit sexual battery are held accountable. A sexual battery is sexual battery, irrespective of whether the touching is done directly by the perpetrator or whether the perpetrator forcibly causes their victim to do the touching. Victims feel no less violated when their hands are forced to touch another person than when another person touches the victim. Perpetrators should therefore face equal accountability when they force a victim to touch another person."

6) **Related Legislation**:

   a) AB 1039 (Rodriguez) would have increased the penalty for specified consensual sexual activity with a confined adult from a misdemeanor to an alternative felony-misdemeanor. The hearing on AB 1039 in this committee was canceled at the request of the author.

   b) AB 977 (Rodriguez) would have made battery committed against a physician, nurse, or other health care worker of a hospital a misdemeanor. The hearing on AB 977 in this committee was canceled at the request of the author,

7) **Prior Legislation**: SB 1421 (Romero), Chapter 302, Statutes of 2002, made touching an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, if the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, a sexual battery.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Ventura County Office of the District Attorney

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: July 11, 2023
Counsel: Andrew Ironside

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

SB 449 (Bradford) – As Amended June 22, 2023

SUMMARY: Imposes limitations on the release of specified information in peace officer decertification proceedings and makes other clarifying changes to the peace officer certification process. Specifically, **this bill**:

1) Clarifies that an agency may provisionally employ a person for up to 24 months, pending certification by Commission on Peace Officer Standards and Training (POST), provided that person has received a proof of eligibility and has not been previously certified or denied certification or had their certification revoked.

2) Redefines "certification" to mean any and all valid and unexpired certificates issued pursuant to existing law, including basic, intermediate, advanced, supervisory, management and executive certificates or any proof of eligibility issued by POST.

3) Clarifies POST is not prohibited from considering a peace officer's prior conduct and service record in determining whether suspension is appropriate for serious misconduct.

4) Authorizes the Peace Officer Standards Accountability Division ("Division) to redact any records introduced during the hearings of the Peace Officer Standards Accountability Advisory Board ("Board") and the review by the POST.

5) Provides that neither the Board nor POST are precluded from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken.

6) Provides that if POST determines that disclosure of information may jeopardize an ongoing investigation, put a victim or witness at risk of any form of harm or injury, or may otherwise create a risk of any form of harm or injury that outweighs the interest in disclosure, POST may withhold that information from the peace officer that is the subject of the investigation until the risk of harm is ended or mitigated so that the interest in disclosure is no longer outweighed by the interest in nondisclosure.

7) Requires information that POST releases to a law enforcement agency that has been withheld from the subject peace officer to be kept confidential by the receiving agency.

8) States that the Legislature finds and declares that the limitation on the right of access to the meetings of public bodies or the writings of public officials and agencies imposed, as specified, furthers the need to protect sensitive, private, and confidential information, an ongoing investigation, and individuals from harm.

EXISTING LAW:

1) Provides that the people of the State of California have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3, subd. (b)(1).)

2) Requires minimum training and moral character requirements for peace officers, as defined, while at the same time identifying certain disqualifying factors, including a felony conviction. (Pen. Code, § 830 et seq.; Gov. Code, §§ 1029 & 1031.)

3) Establishes POST to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites. Authorizes POST to cancel a certificate that was awarded in error or fraudulently obtained; however, POST is prohibited from canceling a properly-issued certificate. (Pen. Code, §§ 830-832.10 & 13500 et seq.)

4) Establishes the Board's purpose, member composition, term length and limits, and compensation. (Pen. Code, §13509.6, subds. (b)-(h).)

5) Requires POST to establish a certification program for peace officers, as defined, and provides that basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers. (Pen. Code, § 13510.1, subds. (a) & (b).)

6) Provides that certificates shall be awarded on the basis of a combination of training, education, experience, and other prerequisites, as determined by POST, and specifies what POST shall recognize as acceptable college education in determining whether an applicant for certification has the requisite education. (Pen. Code, § 13510.1, subd. (c).)

7) Provides that persons who are determined by POST to be eligible peace officers may make application for the certificates, provided they are employed by an agency which participates in the post program. Any agency appointing an individual who does not already have a basic certificate and who is not eligible for a certificate shall make application for proof of eligibility within 10 days of appointment. (Pen. Code, § 13510.1, subd. (d).)

8) Gives POST the authority to suspend, revoke, or cancel any certification. (Pen. Code, § 13510.1, subd. (f).)

9) Provides that an agency that employs peace officers shall employ as a peace officer only individuals with current, valid certification, except that an agency may provisionally employ a person for up to 24 months, pending certification by POST, provided that the person has received certification and has not previously been certified or denied certification. (Pen. Code, § 13510.1, subd. (g)(1).)

10) Provides that, commencing January 1, 2023, any peace officer who does not possess a basic certificate and who is not yet or will not be eligible for a basic certificate, shall apply to

POST for proof of eligibility. (Pen. Code, § 13510.1, subd. (h)(2).)

11) Defines "certification" as a valid and unexpired basic certificate or proof of eligibility issued by POST, as specified. (Pen. Code, § 13510.1, subd. (i).)

12) Provides that a certified peace officer shall have their certification revoked if the person is or has become ineligible to hold office as a peace officer, as specified. (Pen. Code, § 13510.8, subd. (a)(1).)

13) Provides that a certified peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct, as specified. (Pen. Code, § 13510.8, subd. (a)(2).)

14) Provides that POST may initiate proceedings to revoke or suspend a peace officer's certification for conduct that occurred before January 1, 2022 only for either of the following:

    a) Serious misconduct, as specified; or,

    b) If the employing agency makes a final determination regarding its investigation of the misconduct after January 1, 2022. (Pen. Code, § 13510.8, subd. (g)(1).)

15) Specifies that nothing prevents POST from considering the peace officer's prior conduct and service record in determining whether revocation of certification is appropriate for serious misconduct. (Pen. Code, § 13510.8, subd. (g)(2).)

16) Establishes within POST the Division, the responsibilities of which shall be to review investigations conducted by law enforcement agencies or any other investigative authority and to conduct additional investigations, as necessary, into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification, present findings and recommendations to the board and POST, and bring proceedings seeking the suspension or revocation of certification of peace officers as directed by the board and POST. (Pen. Code, § 13509.5, subds. (a) & (b).)

17) Provides that when, upon the completion of an investigation into serious misconduct, the Division finds reasonable grounds for revocation or suspension of a peace officer's certification, it shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal. (Pen. Code, § 13510.85, subd. (a)(1).)

18) Sets forth rules and processes governing requests by peace officers to review of a determination made by the Board and POST, requires the Board to conduct public hearings, as specified, and directs POST to review recommendations made by the Board, as specified. (Pen. Code, § 13510.85, subd. (a)(2)-(5).)

19) Provides that POST shall return any determination requiring action to be taken against an individual's certification to the Division, which shall initiate proceedings for a formal

hearing before an administrative law judge in accordance with the Administrative Procedure Act, as specified. (Pen. Code, § 13510.85, subd. (a)(6).)

20) Provides that the hearings of the Board and the review by POST, specified administrative adjudications, and any records introduced during those proceedings shall be public. (Pen. Code, § 13510.85, subd. (b).)

21) Provides that, beginning January 1, 2023, any agency employing peace officers shall report to POST within 10 days, in a form specified by POST, any of the following events:

   a) The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer, as specified;

   b) Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification;

   c) Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification;

   d) The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification; and

   e) Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification. (Pen. Code, § 13510.9, subd. (a).)

22) Provides that POST shall maintain information reported to it in a form determined by the commission, and in a manner that may be accessed by the subject peace officer, any employing law enforcement agency of that peace officer, any law enforcement agency that is performing a preemployment background investigation of that peace officer, or the commission when necessary for the purposes of decertification. (Pen. Code, § 13510.9, subd. (e).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 449 makes technical changes to the police decertification process enacted into law by SB 2 (Bradford, 2021) to allow the POST Commission to better implement and administer the decertification process."

2) **POST Certification and SB 2 (Bradford), Chapter 409, Statutes of 2021:** POST was established by the Legislature in 1959 and currently has a staff of over 130 and functions under an executive director that is appointed by the full commission. POST is funded through

the general fund and through the state penalty fund, which receives money from penalty assessments on criminal and traffic fines. Existing law sets forth the basic criteria individuals must meet in order to be appointed as a peace officer, and gives POST authority to set minimum training and selection standards for peace officers employed by agencies that participate in the POST program. (Gov. Code, § 1029; Pen. Code, § 13510, subd. (a).

In 2021, the Legislature passed sweeping legislation requiring POST to create a new, mandatory certification process for peace officers. (SB 2 (Bradford), Chapter 409, Statutes of 2021.) Under SB 2, POST was directed to create a certification program for peace officers, who must receive a proof of eligibility and a basic certificate in order to serve in that capacity. (Pen. Code, § 13510.1; see https://post.ca.gov/Certification.) Additionally, SB 2 provided a new mechanism by which POST may investigate and review allegations of "serious misconduct" against an officer. The measure empowered POST to make a determination on whether, at the conclusion of that investigation, to suspend or revoke the officer's certification. Recent reports state that twenty California police officers face possible decertification by POST. (Winton, *Twenty police officers in California face possible decertification, which would end their career*. (Apr. 3, 2023) Los Angeles Times <https://www.latimes.com/california/story/2023-04-03/twenty-police-officers-in-california-face-possible-decertification-a-move-that-would-stop-them-being-cops> [as of July 3, 2023])

SB 2 also created two new entities within POST: the Peace Officer Standards Accountability Division (the "Division"), which is tasked with conducting and reviewing investigations into serious misconduct and bringing proceedings seeking revocation or suspension of certifications; and the Peace Officer Standards Accountability Advisory Board (the "Board"), which is tasked with making recommendations on the decertification of peace officers to the POST Commission. (Pen. Code, §§ 13509.5 & 13509.6)

3) **Limiting Access to Sensitive Information in POST Proceedings:** Under existing law, when the Division finds reasonable grounds for revocation or suspension of an officer's certification after conducting a serious misconduct investigation, and the officer appeals that determination, the Board is required to review the Division's determination. (Pen. Code, § 13510.85, subd. (a)(1).) Existing law requires the Board to meet at least four times per year to conduct these reviews in public hearings and make recommendations to POST on appropriate sanctions, if warranted. (Pen. Code, § 13510.85, subd. (a)(3) & (4).) Existing law expressly provides that hearings of the board and review of decertification recommendations by POST, and any records introduced during those proceedings, are public. (Pen. Code, § 13510.85, subd. (b).)

This bill would impose a limitation on the requirement that these hearings and records be public. It specifically authorizes the Division to redact any records introduced during the hearings of the Board and the review by the POST. It also provides that neither the Board nor POST are precluded from reviewing the unredacted versions of these records in closed session and using them as the basis for any action taken.

A separate provision of this bill would impose a limitation on the existing requirement that POST maintain information reported to it by law enforcement agencies regarding specified employment changes and allegations that could render a peace officer subject to suspension or revocation of their certification. Under that existing requirement, POST must maintain the information in a manner that may be accessed by the subject peace officer, any law

enforcement agency performing a preemployment background investigation, or POST for purposes of decertification. (Pen. Code, § 13510.9, subd. (e).) This bill would provide that if POST determines that disclosure of that information may jeopardize an ongoing investigation, put a victim or witness at risk, or may create any risk of harm or injury that outweighs the interest in disclosure, POST may withhold the information from the subject peace officer until the risk has abated such that the interest in disclosure is no longer outweighed by the risk.

4) **Definitional and Clarifying Changes to SB 2 Process**

a) *Definition of "Certification"*: Under existing law, "certification" is defined as a valid and unexpired basic certificate or proof of eligibility. (Pen. Code, § 13510.1, subd. (i).) Under SB 2, beginning January 1, 2023, all peace officers who do not possess or are not eligible for a basic certificate are required to obtain a "proof of eligibility" within 10 days of appointment, regardless of whether they are employed by a POST participating agency. (Pen. Code, § 13510.1, subd. (d).)The "proof of eligibility" is merely a certification – distinct from a basic certificate – that confirms that an individual is eligible to be a peace officer in California. (https://post.ca.gov/SB-2-FAQs) In addition to the basic certificate, existing law requires POST to create programs for the issuance of intermediate, advanced, supervisory, management, and executive certificates. (Pen. Code, § 13510.1, subds. (a) & (b).)

This bill would redefine "certification" to mean any and all valid and unexpired certificates issued by POST, including basic, intermediate, advanced, supervisory, management, and executive certificates, or any proof of eligibility.

b) *Minimum Peace Officer Eligibility Requirements*: Under existing law, law enforcement agencies that employ peace officers can only employ individuals with current, valid certification. (Pen. Code, § 13510.1, subd. (g)(1).) However, an exception exists wherein agencies may provisionally employ a person for two years pending certification by POST provided that the person has received certification and has not previously been certified or denied certification. (*Ibid.*) This bill would modify that exception, providing that an agency may provisionally employ a person for two years pending certification as long as that person has received a proof of eligibility and has not previously been certified or had their certification denied or revoked.

c) *Suspension Determinations:* Existing law states that a peace officer may have their certification suspended or revoked if the person has been terminated for cause from employment as a peace officer, or has, while employed as a peace officer, otherwise engaged in any serious misconduct. (Pen. Code, § 13510.8, subd. (a)(2).) A subsequent provision provides an extensive description of what may constitute "serious misconduct." (Pen. Code, § 13510.8, subds. (b)(1)-(9).) Within the same section, existing law provides that POST may initiate proceedings to revoke or suspend a peace officer's certification for specified serious misconduct that occurred before January 1, 2022, the effective date of SB 2. (Pen. Code, § 13510.8, subds. (g)(1).) A clarifying sentence specifies that nothing in the provision above prevents POST from considering the peace officer's prior conduct and service record in determining whether *revocation* is appropriate for serious misconduct. (Pen. Code, § 13510.8, subds. (g)(2).) This bill would add that nothing in the provision prevents POST from also considering the peace officer's prior conduct and

service record in determining whether *suspension* is appropriate.

5) **Argument in Opposition**: The opposition letter on file is not relevant to the current version of this bill.

6) **Related Legislation**: AB 134 (Committee on Budget), would provide, among other things, that peace officer personnel files and background investigative files gathered by law enforcement agencies that are in the custody of POST in connection with its authority to verify eligibility for issuance of certification and investigate ground for decertification of a peace officer are not required to be disclosed in response to a request for records under the California Public Records Act (CPRA). AB 134 is on the Governor's desk.

7) **Prior Legislation**:

   a) SB 2 (Bradford), Chapter 409, Statutes of 2021, granted new powers to POST by creating a process to investigate and determine the fitness of a person to be a peace officer, and to decertify peace officers who are found to have engaged in "serious misconduct."

   b) AB 60 (Salas), of the 2021-2022 Legislative Session, would have added criteria disqualifying individuals from serving as peace officers and established a peace officer decertification process within POST. The hearing on AB 60 is this committee was postponed by the author.

   c) AB 17 (Cooper), of the 2021-2022 Legislative Session, was substantially similar to AB 60. AB 17 did not receive a hearing in this committee.

   d) AB 26 (Holden), Chapter 403, Statutes of 2021, disqualified a person from being a peace officer if they have been found by a law enforcement agency that employs them to have either used excessive force that resulted in great bodily injury or death or to have failed to intercede in that incident as required by a law enforcement agency's policies.

   e) AB 958 (Gipson), Chapter 408, Statutes of 2021, required all law enforcements agencies to maintain a policy that prohibits participation in a "law enforcement gang" and makes a violation of that policy grounds for termination.

   f) AB 718 (Cunningham), of the 2021-2022 Legislative Session, would have required investigations into allegations that a law enforcement officer engaged in certain conduct, such as discharging a firearm or using force that resulted in death or great bodily injury, be completed regardless of whether the officer voluntarily separates from the agency before the investigation is completed. AB 718 was held the Senate Appropriations Committee in the Suspense File.

   g) SB 16 (Skinner), Chapter 402, Statutes of 2021, expanded the categories of police personnel records that are subject to disclosure under the CPRA.

   h) SB 731 (Bradford), of the 2019-2020 Legislative Session, was similar to SB 2 (Bradford) above and would have created a process for decertification of police officers. SB 731 was never heard on the Assembly Floor.

i) AB 1022 (Holden), of the 2019-2020 Legislative Session, would have disqualified a person from being a peace officer if they have been found by a law enforcement agency that employees them to have either used excessive force that resulted in great bodily injury or death or to have failed to intercede in that incident as required by a law enforcement agency's policies. AB 1022 was held on the Senate Appropriations Suspense File.

j) AB 1506 (McCarty), Chapter 326, Statutes of 2020, required a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian, as defined.

k) SB 1421 (Skinner), Chapter 988, Statutes of 2018, subjected specified personnel records of peace officers and correctional officers to disclosure under the CPRA.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

California Association of Highway Patrolmen

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: July 11, 2023
Counsel: Liah Burnley

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

SB 485 (Becker) – As Amended July 6, 2023

As Proposed to be Amended in Committee

SUMMARY: Expands an existing felony of interfering with officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as specified. Specifically, **this bill**:

1) Provides that "officers holding an election or conducting a canvass," for the purposes of the existing statute prohibiting election interference, include, but are not limited to, the following:

    a) The Secretary of State as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the provisions of the Elections Code; and

    b) Elections officials or their staff, including temporary workers and members of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass.

2) Provides that "conducting an election or canvass", for the purposes of the existing statute prohibiting election interference, includes, but is not limited to, the election observation process governed by the Elections Code and applicable regulations adopted by the Secretary of State.

3) Provides that "voting at an election", for the purposes of the existing statute prohibiting election interference, includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

4) Provides that "voting at any election" for the purposes of the existing statute prohibiting threats to induce or compel a person to vote or refrain from voting at any election includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

EXISTING LAW:

1) Provides that any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is guilty of a felony, punishable by imprisonment in a county jail for 16 months or two or three years. (Elec. Code, § 18502.)

2) Provides that any person who makes use of, or threatens to make use of, any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony, punishable by imprisonment in a county jail for 16 months or two or three years. (Elec. Code, § 18540, subd. (a).)

3) Provides that any person who hires or arranges for any other person to make use of, or threaten to make use of, any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony, punishable by imprisonment in a county jail for 16 months or two or three years. (Elec. Code, § 18540, subd. (b).)

4) Makes it a crime punishable by imprisonment in county jail or in state prison for a person to knowingly challenge a person's right to vote without probable cause or on fraudulent or spurious grounds; to engage in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting; or to fraudulently advise any person that the person is not eligible or registered to vote when in fact that person is eligible or is registered, or who violates a provision of existing law relating to challenges of voters at a polling place. Makes it a felony to conspire to violate these provisions. (Elec. Code, § 18543.)

5) Makes it a crime punishable by a fine, by imprisonment in county jail or in state prison, or by both a fine and imprisonment, for a person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place, or to hire or arrange for another such person do so, without written authorization of the appropriate city or county elections official. (Elec. Code, §§18544, 18545.)

6) Makes it a misdemeanor for a member of the public to willfully engage in any attempt to ascertain the identity and ballot choices of a voter while observing the processing of vote by mail ballots, the semifinal official canvass, the official canvass, or a recount, as specified. (Elec. Code, § 18562.5.)

7) Provides that the Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. (Gov. Code, § 12172.5, subd. (a).)

8) Requires the Secretary of State to see that elections are efficiently conducted and that state election laws are enforced. (Gov. Code, § 12172.5, subd. (a).)

9) Requires the Secretary of State to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote by mail ballots and elections observers, as specified. (Elec. Code § 3026.)

10) Defines "elections official" as any of the following:

    a) A clerk or any person who is charged with the duty of conducting an election; or,

    b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state. (Elec. Code, § 320.)

11) Defines "elections official," for the purposes of provisions of law related to intimidation of voters, as the county elections official, registrar of voters, or city clerk. (Elec. Code, § 18546.)

12) Defines the term "precinct board" to mean the board appointed by the elections official to serve at a single precinct or a consolidated precinct, or vote center; when used in relation to proceedings taking place after the polls have closed to include any substitutive canvassing and counting board that may have been appointed to take the place of the board theretofore serving; or, as a member of the precinct board and includes an election officer. (Elec. Code, § 339.)

13) Provides that it is an alternative felony-misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison, to willfully threaten to commit a crime, which will result in the death or great bodily injury of another person. (Pen. Code, § 422.)

14) Provides that every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding $10,000, or by imprisonment in a county jail not exceeding one year, or by both. (Pen. Code, § 69.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Recent surges in election misinformation created unprecedented attention on elections and election officials. This attention has led to negative outcomes for poll workers across the country, including here in California. Increased use of social media has facilitated the rapid dissemination of unverified information, fostering a surge in dangerous election misinformation. Consequently, this has fueled democratic division and skepticism towards electoral processes, prompting a wave of uncertainty and mistrust among the public.

   "Among those burdened by this surge in distrust have been election workers and other parties that conduct elections including volunteers. Unproven claims of fraud, tampering, or election interference have created undue barriers for election workers including threats to their personal safety and mental health.

   "The escalating hostility and acrimonious discourse surrounding elections have taken a toll on elections officials and their staff. This strain on the election's workforce impedes their ability to effectively serve Californians and their communities. Concerns for personal safety

and the well-being of their families prompt some individuals to leave the election profession altogether.

"This bill clarifies the parties involved in an election and expansive voting definitions as it relates to contact free voting like mail in voting or ballot drop boxes. Election workers play an integral role in our democracy and we must ensure their safety and wellbeing is protected from election interference and misinformation."

2) **Need for this Bill**: Several provisions of existing law seek to protect election workers and voters from bad actors. For instance, Elections Code section 18502 makes it a felony for a person to interfere with the "officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted." (Elec. Code, § 18502.) This offense is a felony, punishable by imprisonment in a county jail for 16 months or two or three years. (*Ibid.*)

However, according to the author and sponsor, the applicability of the term "officers holding an election" in Section 18502 is unclear. Accordingly, this bill seeks to define who encompasses an "officer" by providing that an officer holding an election includes the Secretary of State as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the provisions of the Elections Code and elections officials or their staff, including temporary workers and members of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass. It should be noted however, that both Elections Code sections 320 and 18546 define "elections official." This bill would significantly expand this term for purposes of interfering with an election to include temporary workers.

Additionally, the author and sponsor state that the applicability of the phrases "holding an election or conducting a canvass" and "voting in an election" in Elections Code section 18502 is unclear. Thus, this bill clarifies what it means to "conduct an election or canvass" and what the phrase "voting in an election" includes. Specifically, this bill would provide that "conducting an election or canvass" includes the election observation process governed by the Elections Code and applicable regulations adopted by the Secretary of State. "Voting at an election", includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

Under current law, Elections Code section 18540 makes it a felony to threaten to use any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election. This offense is punishable by imprisonment in a county jail for 16 months or two or three years. (Elec. Code, § 18540.) This bill amends Section 18540 and provides, for the purposes of this statute, that "voting at an election", includes, but is not limited to, voting in person at a polling place or at the office of the elections official, including satellite locations and voting by mail.

3) **Argument in Support**: According to the *California Secretary of State*, "This measure is necessary to provide for the safety of election officials and other key election workers by expanding the definition of an 'election officer' to all individuals involved in election proceedings.

"Widespread misinformation and attempts to interfere with the democratic process have fueled alarming instances of threatening and violent behavior toward election workers. Intimidation towards workers and voters include physicals assaults, blocking drop boxes, verbal and online threats, and planned disruptive actions via social media, which have been partially coordinated through online forums.

"Frequent violence and threats have resulted in nationwide shortages of election workers as they fear for their safety. Many locations have been forced to invest unanticipated expenditures to implement secondary safety measures such as reinforced doors and panic buttons. The current landscape calls for measures to ensure the safety and well-being of California elections workers and voters. It is crucial to address the challenges posed by misinformation, electoral manipulation, and threats to the integrity of elections."

4) **Related Legislation**:

a) AB 1559 (Jackson), would clarify that it is a criminal offense to interfere with voting by knowingly providing unauthorized access to certified voting technology. AB 1559 is pending in the Senate Public Safety Committee.

b) AB 1539 (Berman), would make it a misdemeanor for any person to vote or to attempt to vote both in an election held in this state and in an election held in another state on the same date. AB 1539 is pending in the Senate Public Safety Committee.

5) **Prior Legislation**:

a) SB 1131 (Newman), Chapter 554, Statutes of 2022, allows individuals who face threats or acts of violence or harassment because of their work for public entities, including election workers, to participate in an address confidentiality program and to have their voter registration information made confidential.

b) SB 35 (Umberg), Chapter 13, Statutes of 2021, added several new crimes to the Elections Code including specifically prohibiting the obstruction of a vote by mail ballot drop box, and prohibiting blocking parking and the ingress and egress to a vote site.

c) AB 777 (Harper), of the 2017-2018 Legislative Session, would have increased the maximum fine amount from $1,000 to $10,000 for fraudulently signing a ballot. AB 777 failed passage in the Assembly Elections Committee.

d) SB 1376 (Perata), Chapter 813, Statutes of 2004, authorized the Secretary of State, and in some cases the Attorney General and county elections officials, to take legal actions regarding the security of voting systems and the conduct of elections.

REGISTERED SUPPORT / OPPOSITION:

Support

California Secretary of State (Sponsor)

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 SB-485 (Becker (S))

Mock-up based on Version Number 94 - Amended Assembly 7/6/23
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

SECTION 1. Section 18502 of the Elections Code is amended to read:

18502. (a) Any person who in any manner interferes with **the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election,** ~~any of the following~~ as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.~~:~~

~~(1) An elections official or their staff, including temporary workers and volunteers, in their performance of any duty related to conducting an election or canvass.~~

~~(2) A member of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass.~~

~~(3) A voter lawfully exercising their rights of voting at an election.~~

(b) For the purposes of this section, "officers holding an election or conducting a canvass" include, but are not limited to, the Secretary of State as the chief elections officer, and their staff, as it relates to performance of any of their duties related to administering the provisions of the Elections Code, and elections officials or their staff, including temporary workers and members of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass.

~~(b)~~ **(c)** For purposes of this section, "conducting an election or canvass" includes, **but is not limited to,** the election observation process governed by this code and applicable regulations adopted by the Secretary of State.

~~(c)~~ **(d)** For purposes of this section, "voting at an election" includes, **but is not limited to,** voting in person at a polling place or at the office of the elections official, including satellite locations pursuant to Section 3018, and voting by mail and returning a voted ballot pursuant to subdivision (a) of Section 3017.

SEC. 2. Section 18540 of the Elections Code is amended to read:

18540. (a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years.

(c) For purposes of this section, "voting at any election" includes**, but is not limited to,** voting in person at a polling place or at the office of the elections official, including satellite locations pursuant to Section 3018, and voting by mail and returning a voted ballot pursuant to subdivision (a) of Section 3017.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: July 11, 2023
Counsel: Mureed Rasool

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

SB 514 (Archuleta) – As Introduced February 14, 2023

SUMMARY: Extends the sunset date for the provisions that authorize law enforcement authorities to wiretap and otherwise intercept electronic communications to January 1, 2030.

EXISTING LAW:

1) States that people have a right to be secure in their person, houses, papers, and effects against unreasonable seizures and searches; and that a warrant may not be issued except upon probable cause, supported by an oath, and particularly describing the nature of the search or seizure. (Cal. Const., art. I, § 13.)

2) Declares that:

   a) Scientific and technological advancements have led to the development of new techniques to surreptitiously listen in on previously private communications;

   b) The continual use of such techniques poses a serious threat to the free exercise of personal liberties to such a degree that it constitutes an invasion of privacy; and,

   c) Such techniques cannot be tolerated in a free and civilized society, and must be prohibited except for the necessary exemption for law enforcement officials legitimately investigating and apprehending criminal offenders. (Pen. Code, § 630.)

3) Prohibits the unlawful interception of wire or electronic communications and specifies that a violation can lead to imprisonment in county jail for up to three years. (Pen. Code, § 629.84.)

4) Defines, for the purposes of the intercepting wire or electronic communications, the following:

   a) "Wire communication" as any aural transfer that is transmitted by aid of wire, cable, or other similar connection that is operated by a provider;

   b) "Electronic communication" as any transfer of signs, writings, images, sounds, or other data of any nature through the use of wire, radio, or photo-optical system that does not include tracking devices, wire communications, or fund transfer information stored by a financial institution;

   c) "Tracking device" as a device permitting the tracking of the movement of a person or object; and,

d) "Aural transfer" as a transfer containing a human voice at any point between and including the points of origin and reception (Pen. Code, § 629.51, subd. (a).)

5) Outlines the manner in which a specified law enforcement authority may request to lawfully intercept a wire or electronic communication, which includes:

a) The identity of the law enforcement officer requesting the interception;

b) Details of the offense committed or to be committed;

c) Reasons as to why conventional investigative techniques are or appear unlikely to succeed;

d) A particular description of the type of communication to be intercepted;

e) The period of time for which the interception is required to be maintained;

f) An application for an extension and reason for failing to obtain results within the period of time initially allotted; and,

g) Any additional information a judge deems necessary to support the interception. (Pen. Code, § 629.50.)

6) Requires that, before authorizing an interception of a communication within the territorial jurisdiction the judge sits in, the judge must determine the following:

a) Probable cause exists to believe an individual has, is currently, or will commit:

i) A specified transportation or possession for sales violation for substances wherein the substance exceeds 10 gallons or 3 pounds by weight;

ii) Murder, solicitation for murder, kidnap for gain or rape, or a specified destructive device crime;

iii) A felony gang-related crime;

iv) A crime pertaining to weapons of mass destruction, or restricted biological agents;

v) Human trafficking; or,

vi) Or any conspiracy thereof.

b) There is probable cause that the interception will result in information related to the above-mentioned illegal activities;

c) There is probable cause that the communications from the targeted facility or individual is connected with the commission of the above-mentioned illegal activities; and,

d) Normal investigative procedures have failed or reasonably appear unlikely to succeed or are too dangerous. (Pen. Code, § 629.52.)

7) Specifies that an order authorizing the interception of any wire or electronic communication shall include, among other things, the identity of the person whose communications are intercepted, the nature and location of the interceptions, the identity of the agency and person making the interception application, and the length of the interception, among other things. (Pen. Code, § 629.54.)

8) Authorizes a judge to orally approve an interception if, among other things, there is probable cause that an emergency situation exists with respect to the investigation and the situation poses a substantial danger to life or limb. (Pen. Code, § 629.56.)

9) Limits the time period of an interception to only what is necessary, and in no event longer than 30 days before an extension is required. Further limits interceptions to be executed as soon as practicable and in a manner to minimize interceptions of other communications that are not the primary target. An order granting an interception terminates immediately upon attainment of the authorized objective. (Pen. Code, § 629.58.)

10) Requires that reports of the interception be filed with the court at intervals no less frequent than 10 days that show the number of communications intercepted, and a statement detailing what progress has been made or an explanation for a lack thereof. If a judge finds no progress has been made and the explanation is unsatisfactory, the judge must immediately terminate the interception. (Pen. Code, § 629.60.)

11) Requires law enforcement to issue a report to the Attorney General (AG) regarding interception orders, as specified, and requires AG to issue an annual report regarding such interceptions. (Pen. Code, §§ 629.61 & 629.62.)

12) Requires intercepted communications to be recorded, if possible, and to be protected from editing or alterations, be kept in a location required by the judge, and be kept for 10 years, among other things. (Pen. Code, § 629.64.)

13) States that interception applications and orders must be sealed by the judge and only opened upon good cause, as specified. (Pen. Code, § 629.66.)

14) Requires that within a reasonable time, but no later than 90 days after the cessation of an interception, the issuing judge must order the requesting agency to serve all known parties whose communications were intercepted with notice of the existence of the interception, as well as time period and whether any communications were intercepted. (Pen. Code, § 629.68.)

15) Requires a defendant to be notified if they were identified as a result of an interception prior to any plea, hearing or trial, among other things. (Pen. Code, § 629.70.)

16) Permits any person to move to suppress evidence of, or deriving from, an intercepted wire or electronic communication that was obtained in violation of the federal Fourth Amendment or in violation of the Penal Code, as specified. (Pen. Code, § 629.72.)

17) Authorizes any specified persons who have obtained knowledge of the contents of any wire or electronic communication, to use such knowledge as appropriate to the proper performance of their duties and as otherwise specified. (Pen. Code, § 629.76.)

18) Specifies that privileged information overheard during an interception does not result in the information losing its privilege and outlines how officers are to deal with such situations. (Pen. Code, § 629.80.)

19) States that if an officer learns of an offense other than that specified in the interception order, the officer may inform other specified law enforcement authorities of such offense to prevent the commission of a public offense, among other things. (Pen. Code, § 629.82.)

20) Provides persons whose communications were unlawfully intercepted, a civil cause of action except if the interception was made based upon a good faith reliance of a court order. (Pen. Code, § 629.86.)

21) Prohibits an interception order from, either directly or indirectly, authorizing covert entry into a specified premise to facilitate an interception. (Pen. Code, § 629.89.)

22) States that a court ordering an interception may take any evidence, make any finding, or issue any order required to ensure the interception is lawful under the U.S. Constitution, federal law, or specified state law. (Pen. Code, § 629.92.)

23) Requires the AG to set minimum certification and recertification standards that must be attained before specified law enforcement officers can apply for and conduct interceptions. (Pen. Code, § 629.94.)

24) Sunsets the provisions allowing law enforcement to intercept electronic communications on January 1, 2025. (Pen. Code, § 629.98.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Existing law establishes a procedure for a prosecutor to apply for, and the court to issue, an order authorizing law enforcement to intercept a wire or electronic communication. When this was authorized, these provisions were made effective until January 1, 2025. This bill would simply extend the operation of these provisions until January 1, 2030.

   "The interception of wire and electronic communications is a vital tool for law enforcement and prosecutors. We know that these tools are important in keeping our communities safe. We must continue to support our Law Enforcement Officers being able to effectively serve California."

2) **California Electronic Interceptions**: In general, California law prohibits wiretapping and other forms of intercepting electronic communications. (Pen. Code, § 631.) Under current law, a judge may authorize an electronic interception if there is probable cause to believe that 1) an individual is going to commit a specified crime such as murder or a gang-related

offense; 2) the communication relates to the illegal activity; 3) the communication device will be used by the person whose communications are to be intercepted; and, 4) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed or be too dangerous. (Pen. Code, § 629.52; *People v. Leon* (2007) 40 Cal.4th 376, 384.)

According to the Department of Justice (DOJ), court-authorized electronic interceptions are a vital law enforcement tool. (DOJ. *California Electronic Interceptions Report: Annual Report 2022*. (hereafter *2022 Interception Report*) <https://oag.ca.gov/system/files/media/annual-rept-legislature-2022.pdf> [as of Jul. 3, 2023] at p. 1.) Due to the fact that dangerous individuals and criminal entities, such as drug trafficking organizations and criminal street gangs frequently use telecommunications to advance their criminal objectives, electronic interceptions are critical in identifying, disrupting, and preventing crimes. (*Ibid.*) In 2022, California judges approved 468 interception orders out of 468 applications submitted. (*Ibid.*) Authorized interceptions led to 250 total arrests; these arrests were predominantly for murder (151), narcotics offenses (89), and gang-related offenses (6). (*Id.* at 2.)

However, even with such stringent requirements, the potential for abuse exists, as highlighted in 2014 in Riverside County. (*Guerrero v. Hestrin*, (2020) 56 Cal.App.5th 172.)

> "In 2014, a single Riverside County Superior Court judge signed 602 orders authorizing wiretaps. To put that in perspective, all other judges in the state authorized 245 wiretaps that year. And the 602 wiretaps that year comprised approximately 17 percent of all the wiretaps authorized by all the state and federal courts in the nation. The next year, that same judge and one other authorized 640 wiretaps, the rest of the state authorized 505, and the 640 wiretaps comprised roughly 15 percent of all wiretaps in the country…
>
> In 2014 and 2015, two Riverside County judges authorized over 1,200 wiretaps that have since been the subject of public scrutiny and consternation. One federal judge has stated that 'the sheer volume of wiretaps applied for and approved in Riverside County suggests that constitutional requirements cannot have been met…' (*U.S. Mattingly* (W.D.Ky. 2016) 2016 U.S. Dist. Lexis 86489, p. 27), and journalists have reported that the wiretaps 'allowed investigators… to intercept more than 2 million conversations involving 44,000 people' (Heath and Kelman, *Justice officials fear nation's biggest wiretap operation my not be legal*, USA Today (Nov. 11, 2015) https://www.usatoday.com/story/news/2015/11/11/dea-wiretap-operation-riverside-california/75484076/ [as of Oct. 21, 2020]; see also *Ibid.* [reporting that federal prosecutors 'have mostly refused to use the results in federal court because they have concluded the state court's eavesdropping orders are unlikely to withstand a legal challenge'].)"

(*Guerrero v. Hestrin, supra*, 56 Cal.App.5th at 181.)

This bill would extend the sunset provision that allows specified law enforcement authorities to intercept electronic communications until January 1, 2030.

3) **Argument in Support**: According to the bill's sponsor, the *California District Attorneys Association*, "California Penal Code sections 629.50 – 629.98 (Chapter 1.4), collectively known as the 'wiretap statutes,' allow designated law enforcement officers to intercept electronic communications. These statutes are set to be repealed on January 1, 2025 by their own terms.

"As you know, electronic interceptions are an invaluable investigative tool for law enforcement when all other conventional investigative tools have been exhausted. Utilization of electronic interceptions provides a multitude of benefits which directly lead to the success of law enforcement investigations and, in turn, provides a signficant benefit to the public. Wiretaps, as authorized in the California Penal Code, permit their use, upon authorization of a court, for evidence collection, to protect the safety of those suspected of crimes as well as law enforcement officers, and the interdiction of drug-trafficking organizations and criminal street gangs."

4) **Prior Legislation**:

a) AB 304 (Jones-Sawyer), Chapter 607, Statutes of 2019, extended the sunset provision for communication interceptions to January 1, 2025.

b) SB 35 (Pavley), Chapter 745, Statutes of 2014, extended the sunset provision for communication interceptions to January 1, 2020.

c) SB 61 (Pavley), Chapter 663, Statutes of 2011, among other things, extended the sunset provision for communication interceptions to January 1, 2015.

d) AB 569 (Portantino), Chapter 391, Statutes of 2007, extended the sunset provision for communication interceptions to January 1, 2012.

e) AB 74 (Washington), Chapter 605, Statutes of 2002, among other things, extended the sunset provision for communication interceptions to January 1, 2008.

f) SB 688 (Ayala), Chapter 355, Statutes of 1997, among other things, extended the sunset provision for communication interceptions to January 1, 2003.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association

Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None received.

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: July 11, 2023
Counsel: Liah Burnley

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

SB 519 (Atkins) – As Amended July 5, 2023

As Proposed to be Amended in Committee

SUMMARY: Makes records relating to an investigation conducted by a local detention facility into a death incident available to the public, as specified. Specifically, **this bill**:

1) Provides that records relating to an investigation conducted by a local detention facility involving a death incident maintained by a local detention facility shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (CPRA).

2) Defines "death incident" as an event where a person has died in the custody or supervision of the local detention facility or where a person who was previously in custody and died within 30 days of being compassionately released.

3) Defines "local detention facility" as any city, county, city and county, or regional jail, camp, court holding facility, private detention facility, or other facility in which persons are incarcerated.

4) Specifies that the records shall include all of the following:

   a) Investigative reports;

   b) Photographic, audio, and video evidence;

   c) Transcripts or recordings of interviews;

   d) Autopsy reports;

   e) 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 a person, whether the person'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;

   f) Documents setting forth findings or recommended findings; and,

   g) Copies of disciplinary records relating to the death 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.

5) Allows agencies to redact the records only for any of the following purposes:

   a) To remove personal data or information, such as home address, telephone number, or identities of family members, other than the names and work-related information;

   b) To preserve the anonymity of whistleblowers, complainants, and witnesses;

   c) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or world cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct;

   d) Where there is a specific articulable and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of any person; or,

   e) Where, on the facts of the particular case, the public interests served by not disclosing the information clearly outweighs the public interests served by disclosure of information.

6) Provides that a local detention facility may withhold a record of a death incident that is the subject of an active criminal or administrative investigation, as specified.

7) Provides that these provisions do not affect the discovery or disclosure of information contained in an officer's personnel file pursuant to section 1043 of the Evidence Code, relating to the discovery of peace officer personnel records.

8) Provides that these provisions do not supersede or affect the criminal discovery process or the admissibility of personnel records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.[1]

9) Provides that nothing in these provisions are intended to limit the public's right of access as provided for in Long *Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.[2]

10) Provides that the provisions relating to the public disclosure of records of death incidents shall become operative on July 1, 2024.

11) Expands the mission of the Board of State and Community Corrections (BSCC) to include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems, and to promote legal and safe conditions for

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[1] In *Pitchess v. Superior Court* (1974) 11 Cal.3d.531, the Supreme Court of California held that a criminal defendant's fundamental right to a fair trial entitles a defendant who is asserting self-defense to a charge of battery to discovery of police personnel records of the arresting police officer.

[2] In *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, the California Supreme Court held that the names of police officers involved in shootings generally must be disclosed under the CPRA.

youth, inmates, and staff in local detention facilities.

12) Creates the independent Office of the Local Detention Monitor within the BSCC.

13) Requires the Governor to appoint, subject to confirmation by the Senate, the Local Detention Monitor to a six-year term. The Local Detention Monitor shall not be removed from office during that term except for good cause.

14) Provides that the Local Detention Monitor shall be responsible for oversight of conditions in local detention facilities and shall have the authority of public oversight of a local detention facility in matters relating to in-custody deaths and the delivery of medical and mental health care.

15) States that, during the course of an audit or review, the Local Detention Monitor shall identify areas of compliance with local detention facility policies and procedures, specify deficiencies of processes, and recommend corrective actions, including, but not limited to, additional training, additional policies, or changes in policy, and other findings or recommendations that the Local Detention Monitor deems appropriate.

16) Provides that specified books, papers, records, and correspondence of the Local Detention Monitor are public records, subject to disclosure under the CPRA, unless they are otherwise exempt from disclosure under all other applicable laws regarding confidentiality, including the Public Safety Officer's Bill of Rights, among others.

17) Provides that, when requested by the Governor, the Senate Committee on Rules, the Speaker of the Assembly, or a board of supervisors by resolution, the Local Detention Monitor shall initiate an audit or review of policies practices and procedures of the local detention facility. Following a completed audit or review, the Local Detention Monitor may perform a follow-up audit or review to determine what measures the department implemented to address the Local Detention Monitor's findings and to assess the effectiveness of those measures.

18) Requires, following an audit, the Local Detention Monitor to prepare and submit a written report, which may be held as confidential and disclosed in confidence, to the BSCC, the audited local detention facility, and the requesting entity.

19) Requires, following an audit, the Local Detention Monitor to also prepare and post a public report on the BSCC's website. When necessary, the public report shall differ from the confidential report only to redact or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution, compromise the safety and security of staff, incarcerated persons, or members of the public, or where disclosure of the information is otherwise prohibited by law.

20) Requires the Local Detention Monitor to report annually, until January 1, 2028, to the Governor and the Legislature a summary of its reports.

21) Allows the BSCC to call upon the local detention facility to respond to and discuss the audit at BSCC's regularly scheduled meetings.

22) States Legislative findings and declarations.

EXISTING LAW:

1) Declares the people's right to transparency in government. (Cal. Const., art. I, Sec. 3.)

2) Generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

3) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. (Gov. Code, § 7922.525.)

4) Provides that, subject to exceptions, the CPRA does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)

5) Provides that in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death, as specified. These writings are public records within the meaning of the CPRA. (Gov. Code, § 12525.)

6) States that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)

7) Provides that certain categories of peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the CPRA, and establishes related procedures, rules and limitations. (Pen. Code, § 832.7, subd. (b).)

8) Establishes the BSCC. (Pen. Code, § 6024, subd. (a).)

9) States that as of July 1, 2013, the BSCC shall consist of 13 members, as specified. (Pen. Code, § 6025, subd. (b).)

10) Provides that the mission of the BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. (Pen. Code, § 6024, subd. (b).)

11) Requires BSCC to establish minimum standards for local correctional facilities, to review those standards biennially and make any appropriate revisions. These standards include, but are not limited to health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training. (Pen. Code, § 6030.)

12) Provides that it is the duty of the BSCC to collect and maintain available information and data about state and community corrections policies, practices, capacities, and needs. (Pen. Code, § 6027, subd. (a).)

13) Requires the BSCC to seek the advice of the State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons in establishing minimum standards related to health and sanitary conditions. (Pen. Code, § 6030, subd. (g)(1).)

14) Requires the BSCC to inspect each local detention facility in the state biennially, at a minimum. (Pen. Code, § 6031, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 519 will expand accountability to ensure that investigations relating to in-custody deaths are publicly accessible in order to help reduce future deaths, similar to other public records made available in certain law enforcement use of force cases.

   "SB 519 also expands the mission of the Board of State and Community Corrections to adjust the Department's mission to further promote legal and safe conditions for youth, inmates, and staff in local detention facilities."

2) **Deaths in Custody:** Between 2006 and 2020, 185 people died in San Diego County jails – one of the highest totals among counties in the State. (California State Auditor, *Report 2021-109, San Diego County Sheriff's Department – It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody* (Feb. 3, 2022) <http://www.auditor.ca.gov/reports/2021-109/index.html> [July 5, 2023].) In 2022, the San Diego Sheriff's Department reported 19 deaths in custody, as well as 8 so far in 2023. (San Diego County Sheriff's Department, *Homicide, In-Custody Deaths, Officer Involved Shootings* <https://www.sdsheriff.gov/resources/transparency-reports> [July 5, 2023].) San Diego jails have the highest number of "unexplained deaths" out of California's 12 largest counties. (San Diego Citizens Law Enforcement Review Board, *San Diego In-Custody Death Study* (April 2022) at pp. iii-iv <https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/in-custody-death-study/Att.G-CLERB%20In-Custody%20Death%20Study.pdf> [July 5, 2023].)

However, this problem is not confined to San Diego. In March 2023, three individuals incarcerated in Los Angeles County died in just a nine-day period, and for Los Angeles County deaths in custody in 2022, autopsies have only been completed in roughly a third of the 44 cases. (Los Angeles Times, *Three Inmates Died in Los Angeles County Jails in Just Over a Week* (March 28, 2023) <https://www.latimes.com/california/story/2023-03-28/three-inmates-died-in-the-los-angeles-county-jails-in-just-over-a-week> [July 5, 2023].)

According to the Department of Justice, "Since the passage of Public Safety Realignment in 2011 - which mandated that individuals sentenced for specific non-violent offenses be housed in county jails rather than state prisons - the share of deaths in custody reported from county sheriff's departments (who manage county jail systems) has grown from 17.1 percent in 2010 to 22.2 percent in 2014 while CDCR has dropped from 59.3 percent to 47.1 percent during the same timeframe. In 2019, the percentage of county jail deaths grew to 20.6 percent and the percentage of CDCR deaths decreased to 52.8 percent." (DOJ, *Death in Custody from 2010 to 2019* <https://openjustice.doj.ca.gov/data-stories/2019/death-custody-2010-2019> [July 5, 2023].)

This bill seeks to address the growing crisis of deaths in California's county jails by creating a robust framework for the release of records related to deaths that occur in the custody of a local correctional facility and establishing a Local Detention Monitor within the BSCC.

3) **CPRA**: In 1968, the Legislature passed the California Public Records Act (CPRA), declaring that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state." (Gov. Code, § 7921.000.) The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (City *of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.)

Under the law, virtually all public records are open to public inspection unless express exempted in statute. (Gov. Code, § 7922.000.) However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, "records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely: (1) records of complaints to, or investigations conducted by, any state or local police agency; (2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy; and, (3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law. (Gov. Code, §§ 7923.600, 7927.700, & 7927.705.)

In 1978, the California Legislature codified the privileges and discovery procedures related to Pitchess motions by enacting Penal Code Sections 832.7 and 832.8 and Evidence Code Sections 1043 through 1045. The Penal Code provisions define peace officer "personnel records" and provide that such records are confidential and subject to discovery only pursuant to the procedures set forth in the Evidence Code. The statutory scheme carefully balances two directly conflicting interests: peace officers' claims to confidentiality and defendants' equally compelling interest to all information pertinent to their defense. (*Alt v. Superior Court* (1999) 74 Cal.App.4th 950.)

In 2006, the California Supreme Court reinterpreted Penal Code section 832.7 to restrict public access to police misconduct records, rendering California one of the most secretive states when it came to police officer records. (*Copley-Press, Inv. v. Superior Court* (2006) 39 Cal.4th 1272.) However, in 2018, the Legislature passed SB 1421 (Skinner), Chapter 988, Statues of 2018, which amended Penal Code Section 832.7 and permits public inspection of specified peace and custodial officer records pursuant to the CPRA, if they involve the following: incidents involving the discharge of a firearm or electronic control weapons by an officer; incidents involving strikes of impact weapons or projectiles to the head or neck area; incidents of deadly force or serious bodily injury by an officer; incidents of sustained sexual assault by an officer; or incidents relating to sustained findings of dishonesty by a peace officer.

In 2021, the Legislature passed SB 16 (Skinner), Chapter 402, Statutes of 2021, which also amended Penal Code Section 832.7 and took a modest approach to broadening the categories of personnel records subject to disclosure under the CPRA in three ways. First, SB 16 expanded the use of force disclosures to include uses of force by peace or custodial officers that are used to make a person comply, unreasonable force, and excessive force. Second, SB 16 allowed the release of sustained findings of unlawful searches and unlawful arrests. Finally, SB 16 permitted the release of records that show racist or discriminatory conduct that have been sustained by the agency. SB 16 also contained significant privacy protections, such as permitting the redaction of the identifying information of victims, witnesses, and complainants.

While Senate Bills 1421 and 16 were focused on alleged instances of officer misconduct, this bill seeks to address a distinct yet related issue regarding law enforcement records of death in custody investigations. In order to achieve its goal of transparency, this bill adapts the disclosure framework initially established by SB 1421and SB 16 to apply to local detention facility records regarding deaths in custody. Specifically, this bill would specify that records related to an investigation conducted by the local detention facility involving a death incident are not confidential and are subject to release pursuant to a CPRA request. The process governing the release of records related to deaths in custody set forth by this bill should not be unreasonably difficult for agencies to comply with, as they have had over four years to develop policies and systems to comply with the nearly identical process established by SB 1421 and SB 16.

4) **BSCC**: Established in 2012, the BSCC is an independent statutory agency that provides leadership to the adult and juvenile criminal justice systems, expertise on Public Safety Realignment issues, a data and information clearinghouse, and technical assistance on a wide range of community corrections issues. (Pen. Code, §§ 6024-6025.) In addition, the BSCC promulgates regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities, develops standards for the selection and training of local corrections and probation officers, and administers significant public safety-related grant funding. (BSCC, *About the Board of State and Community Corrections* <https://www.bscc.ca.gov/m_bsccboard/> [July 5. 2023].) The BSCC has four primary responsibilities: setting standards for and inspecting local detention facilities; setting standards for the selection and training of local correctional staff; administering various grant programs related to recidivism and reduction strategies; and administering the state's construction financing program for local detention facilities. (*Ibid.*)

Current law requires the BSCC to maintain minimum standards establish minimum standards for local correctional facilities, to review those standards biennially and make any appropriate revisions. These standards include, but are not limited to health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training. (Pen. Code, § 6030.) Notably, although the BSCC is required to inspect local detention facilities to determine compliance with the standards and to report noncompliance, the BSCC is not authorized under state law to enforce the standards (e.g., by fining a local detention facility).

The BSCC's standards and inspection program is one of the primary ways that the state exercises oversight of local detention facilities. Growing concerns over conditions inside of the state's local detention facilities, including isolation of mentally ill inmates, violence, suicide, use of force, and lack of transparency have led to the introduction of a number of bills in recent years aimed at increasing transparency and accountability as they relate to county jails. In early 2020, Governor Newsom directed the BSCC to strengthen the state's oversight of county jails, and the BSCC has since developed an enhanced jail inspection process which began in 2021. (BSCC, *Targeted Jail Inspections* (Feb. 11, 2021), <https://www.bscc.ca.gov/wp-content/uploads/Info-Item-6-Targeted-Inspections-FINAL.pdf>.)

A recent LAO report concluded that it was difficult to assess the BSCC's standards and inspection program "primarily because the program lacks a clearly defined mission and goals from which to measure specific program outcomes." (LAO, *A Review of State Standards and Inspections for Local Detention Facilities* (Feb. 2021) at p.8 <https://lao.ca.gov/reports/2021/4371/Standards-Inspections-Local-Detention-Facilities-021621.pdf> [as of July 5, 2023].) The report indicated that due to the lack of specificity in state law regarding the BSCC's mission or goals, "it is unclear whether the intended mission of the program is to assist local government in determining legal requirements for facility conditions, create statewide uniformity in facility operations, ensure humane and safe conditions, or something else" and that "[t]he absence of a defined program mission and goals in statute leaves significant discretion to BSCC and the administration in determining how to operate the program." (*Ibid.*) The report further stated that the lack of a clear mission and goals undermines Legislative oversight due to the difficulty in assessing "whether the program fulfills an important state function that is consistent with its priorities"…or "whether the program is operating effectively and achieving its goals." (*Ibid.*)

Among other recommendations, the report urged the Legislature to "establish clear program mission goals by establishing in statute that the mission of the standards and inspection program is to promote legal, humane and safe conditions for youth, inmates and staff in local detention facilities." (LAO, *A Review of State Standards and Inspections for Local Detention Facilities, supra* at pp. 8-10.) To further this mission, the report recommended establishing four goals for the program: (1) maintain standards that help local leaders determine and meet legal requirements; (2) facilitate transparency and accountability through standards and inspections; (3) promote equitable provision of legal, humane, and safe conditions; and (4) provide technical assistance and statewide leadership to facilitate systemic improvement in detention conditions. (*Ibid.*)

This bill partially adopts the above recommendation of the LAO report by expanding the BSCC's mission to include the promotion of legal and safe conditions for youth, inmates, and staff in local detention facilities.

This bill would also create an independent office of the Local Detention Monitor within the BSCC. The Local Detention Monitor would be appointed by the Governor, subject to confirmation by the Senate and serve a six-year term, and could not be removed from the office during that term except for good cause. Under this bill, the Local Detention Monitor would be responsible for oversight of conditions in local facilities, namely in-custody deaths and the delivery of medical and mental health care, under policies to be developed by the Local Detention Monitor. The Local Detention Monitor, upon request by the Governor, the Senate Committee on Rules, the Speaker of the Assembly, or a board of supervisors by resolution, is required to initiate an audit or review of policies practices, and procedures of the local detention facility. During the audit or review, the Local Detention Monitor is required to, among other things, identify areas of full and partial compliance or noncompliance with local detention facility policies, and procedures, and recommend corrective actions.

5) **Argument in Support**: According to the *California News Publishers Association* (CNPA), "Substantial strides have been made in recent years to lift the shroud of secrecy around law enforcement records, through SB 16 (Skinner) and SB 1421 (Skinner), which required disclosure of records about shootings, use of force resulting in death or great bodily injury, and various forms of misconduct.

"This bill is a logical next step to increase transparency around deaths that occur inside our jails. Local jails are intrinsic to the criminal legal system, and the public deserves to have a more complete picture of what causes deaths inside these facilities.

"In the absence of effective and impartial outside scrutiny, the public is left to rely only on limited information that law enforcement is willing to release about in-custody deaths. This expansion of access to records on deaths in custody is critical to effective public oversight.

"SB 519 will help increase the public's understanding in order to promote better local policy decisions that will help save lives of those in custody and hold responsible officials accountable to the public."

6) **Argument in Opposition**: According to the *California State Sheriffs' Association* (CSSA), "we are concerned about the duplicative, additional layer of oversight that the creation of the independent detention monitor portends in the manner in which SB 519 would operate. County jails and sheriffs are currently overseen by the Board of State and Community Corrections (BSCC), county grand juries, state and federal Departments of Justice, state and federal courts, the state auditor, district attorneys, and voters.

"We also understand and share the desire to reduce deaths in custody, but this bill conditions the additional contemplated reviews on the request of the Governor, the Legislature, or boards of supervisors. We fear this construct will fall victim to political whim, resulting in invasive, burdensome, and duplicative investigations.

"SB 519 grants significant and largely unfettered access to documents and staff, which will create workload and resource challenges for county agencies. Additionally, the ability of the monitor to require employees to be interviewed creates substantial concerns relative to employee labor and due process protections."

7) **Related Legislation**:

a) AB 268 (Weber), would require BSCC to develop standards for mental health care in local correctional facilities, commencing on July 1, 2024. AB 268 is pending in the Senate Public Safety Committee.

b) AB 280 (Holden), would require specified correctional facilities in the State to follow specified procedures related to segregated confinement and would have require BSCC to assess each local correctional facility, including private detention facilities, for compliance with procedures relating to segregated confinement. AB 280 is pending in the Senate Public Safety Committee.

c) AB 898 (Lackey), would require probation departments to annually report to BSCC all injuries to juvenile hall staff and juvenile hall residents resulting from an interaction with staff and a resident. AB 898 is pending in the Senate Public Safety Committee.

d) SB 762 (Becker), would require the BSCC to require local correctional facilities to have a procedure for affirming that an incarcerated individual is alive and well during a safety check. SB 762 is pending in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) SB 1137 (Atkins), of the 2021-2022 Legislative Session, would have expanded the BSCC's mission to include the promotion of legal and safe conditions for youth, inmates, and staff in local detention facilities. SB 1137 was substantially amended.

b) AB 2343 (Weber), of the 2021-2022 Legislative Session, would have required BSCC to develop and adopt regulations pertaining to standards of care for incarcerated persons with mental health issues by local correctional facilities, including requirements for training of correctional staff, requirements for mental health screening, and requirements for safety checks of at-risk incarcerated persons. AB 2343 was vetoed.

c) AB 2557 (Bonta), of the 2021-2022 Legislative Session, would have abrogated the California Supreme Court holding in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, and make records and information maintained for the purpose of civilian oversight of peace officers subject to disclosure pursuant to the CPRA. AB 2557 was never heard by the Assembly Judiciary Committee.

d) AB 2632 (Holden), of the 2021-2022 Legislative Session, would have required specified correctional facilities in the State to follow specified procedures related to segregated confinement and would have required BSCC to assess each local correctional facility, including private detention facilities, for compliance with procedures relating to segregated confinement. AB 2632 was vetoed.

e) SB 16 (Skinner), Chapter 402, Statutes of 2021, expanded the categories of police personnel records that are subject to disclosure under the CPRA.

f) SB 1421 (Skinner), Chapter 988, Statutes of 2018, authorized inspection of specified peace and custodial officer records pursuant to the CPRA.

g) SB 1286 (Leno), of the 2015-2016 Legislative Session, would have provided greater public access to peace officer and custodial officer personnel records and other records maintained by a state or local agency related to complaints against those officers. SB 1286 was held in the Senate Appropriations Committee.

h) SB 74 (Committee on Budget and Fiscal Review), Chapter 30, Statutes of 2013, restructured the BSCC, as of July 1, 2013, with 13 members including all members included in the existing composition, plus the creation of a chair to be appointed by the Governor with Senate confirmation.

i) SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011, created the BSCC, beginning July 1, 2012.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance San Diego
Asian Americans Advancing Justice-southern California
Black Panther Party - San Diego
California Broadcasters Association
California Collaborative for Immigrant Justice
California News Publishers Association
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Change Begins With Me (INDIVISIBLE)
Change Begins With Me Indivisible Group
Communities United for Restorative Youth Justice (CURYJ)
Consumer Attorneys of California
Del Cerro for Black Lives Matter
Disability Rights California
Dolores Street Community Services
Ella Baker Center for Human Rights
First Amendment Coalition
Hillcrest Indivisible
Immigrant Defense Advocates
Immigrant Legal Defense
Initiate Justice
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Media Alliance
Milpa (motivating Individual Leadership for Public Advancement)
Muslim American Society - Public Affairs & Civic Engagement (MASPACE)

Nextgen California
Oakland Privacy
Pacific Media Workers Guild (the Newsguild-communications Workers of America Local 39521)
Radio Television Digital News Association
Rise Up San Diego
Safe Return Project
San Diego Pro Chapter of The Society of Professional Journalists
Secure Justice
Sister Warriors Freedom Coalition
Smart Justice California
Team Justice
Think Dignity

Opposition

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

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 SB-519 (Atkins (S))

Mock-up based on Version Number 97 - Amended Assembly 7/5/23
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

SECTION 1. Section 832.10 is added to the Penal Code, to read:

832.10. (a) For purposes of this section, the following definitions shall apply:

(1) "Death incident" means an event where a person has died in the custody or supervision of the local detention facility or where a person who was previously in custody and died within 30 days of being compassionately released.

(2) "Local detention facility" means any city, county, city and county, or regional jail, camp, court holding facility, private detention facility, **or other facility in which persons are incarcerated.** ~~used for confinement or correctional holding of adults or of both adults and minors, but does not include that portion of a facility for confinement of both adults and minors that is devoted only to the confinement of minors~~.

(3) "Private detention facility" has the same meaning as in Section 7320 of the Government Code.

(4) "Person" includes, but is not limited to, a custodial officer or health care staff.

(5) "Custodial officer" means those officers with the rank of deputy, correctional officer, patrol person, or another equivalent sworn or civilian rank whose duties include the supervision of incarcerated or detained persons at a local detention facility.

(6) "Health care staff" means the health authority, individual, or agency that is designated with responsibility for providing health care in the local detention facility.

(b) Notwithstanding subdivision (a) of Section 832.7, or any other law, ~~the following records~~ **any record relating to an investigation conducted by the local detention facility involving a death incident** maintained by a local detention facility shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).~~:~~

~~Any record relating to an investigation conducted by the local detention facility involving a death incident.~~

(c) Records disclosed under subdivision (b) shall be subject to all of the following:

(1) The record 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 a person, whether the person'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 death 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.

(2) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the people's names and work-related information.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of any person.

(3) Notwithstanding paragraph (2) ~~(4)~~, an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(4) A local detention facility may withhold a record of a death incident described ~~in paragraph (1) of~~ subdivision (b) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the death incident occurred or until the district attorney determines whether to file criminal charges related to the death incident, whichever occurs sooner. If a local detention facility delays disclosure pursuant to this clause, the local detention facility shall provide, in writing, the specific basis for the facility's determination that the interest in delaying disclosure clearly outweighs the

public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the death incident, the local detention facility may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against any person. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the death incident, whichever occurs sooner.

(iii) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, a local detention facility may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation. This clause does not prohibit a court from conducting in camera review to determine whether privilege exists.

(B) If criminal charges are filed related to the death incident, the local detention facility may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraphs (1) and (2) of subdivision (b), the local detention facility may delay the disclosure of records or information until the facility determines whether the death incident violated a law or agency policy, but no longer than 180 days after the date of the local detention facility's discovery of the death incident by a person authorized to initiate an investigation.

~~(5) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.~~

~~(6)~~ **(5)** The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (a) of Section 7922.530 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

~~(7)~~ **(6)** Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph **(4)** ~~(6)~~, records subject to disclosure under this section shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

~~(8)~~ **(7)** (A) For purposes of releasing records pursuant to this subdivision, the attorney-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the local detention facility to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the local detention facility's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the local detention facility and its attorney.

(B) This paragraph does not prohibit the local detention facility from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law. However, to the extent that the local detention facility asserts attorney-client privilege or any other prohibitive disclosure provided by federal or state law, the court may conduct in camera review unless prohibited by law.

(d) This section does not affect the discovery or disclosure of information contained in a subject officer's personnel file pursuant to Section 1043 of the Evidence Code.

(e) This section does not affect the disclosure of other records provided under this chapter or any other law.

(f) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to Section 832.7, which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(g) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

(h) This section shall become operative on July 1, 2024.

SEC. 2. Section 6024 of the Penal Code is amended to read:

6024. (a) Commencing July 1, 2012, there is hereby established the Board of State and Community Corrections. The Board of State and Community Corrections shall be an entity independent of the Department of Corrections and Rehabilitation. The Governor may appoint an executive officer of the board, subject to Senate confirmation, who shall hold the office at the pleasure of the Governor. The executive officer shall be the administrative head of the board and shall exercise all duties and functions necessary to ensure that the responsibilities of the board are successfully discharged. As of July 1, 2012, any references to the Board of Corrections or the Corrections Standards Authority shall refer to the Board of State and Community Corrections. As of that date, the Corrections Standards Authority is abolished.

(b) The mission of the board shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems, and to promote legal and safe conditions for youth, inmates, and staff in local detention facilities. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

(c) The board shall regularly seek advice from a balanced range of stakeholders and subject matter experts on issues pertaining to adult corrections, juvenile justice, and gang problems relevant to its mission. Toward this end, the board shall seek to ensure that its efforts (1) are systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, (2) include the participation of those who must implement a board decision and are impacted by a board decision, and (3) promote collaboration and innovative problem solving consistent with the mission of the board. The board may create special committees, with the authority to establish working subgroups as necessary, in furtherance of this subdivision to carry out specified tasks and to submit its findings and recommendations from that effort to the board.

(d) The board shall act as the supervisory board of the state planning agency pursuant to federal acts. It shall annually review and approve, or review, revise, and approve, the comprehensive state plan for the improvement of criminal justice and delinquency and gang prevention activities throughout the state, shall establish priorities for the use of funds as are available pursuant to federal acts, and shall approve the expenditure of all funds pursuant to such plans or federal acts, provided that the approval of those expenditures may be granted to single projects or to groups of projects.

(e) It is the intent of the Legislature that any statutory authority conferred on the Corrections Standards Authority or the previously abolished Board of Corrections shall apply to the Board of State and Community Corrections on and after July 1, 2012, unless expressly repealed by the act that added this section. The Board of State and Community Corrections is the successor to the Corrections Standards Authority, and as of July 1, 2012, is vested with all of the authority's rights, powers, authority, and duties, unless specifically repealed by this act.

(f) For purposes of this chapter, "federal acts" means Subchapter V of Chapter 46 of the federal Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351, 82 Stat. 197; 42 U.S.C. Sec. 3750 et seq.), the federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5601 et seq.), and any act or acts amendatory or supplemental thereto.

SEC. 3. Section 6034 is added to the Penal Code, to read:

6034. (a) There is hereby created the independent Office of the Local Detention Monitor within the Board of State and Community Corrections. The Governor shall appoint, subject to

confirmation by the Senate, the Local Detention Monitor to a six-year term. The Local Detention Monitor shall not be removed from office during that term, except for good cause.

(b) The Local Detention Monitor shall be responsible for oversight of conditions in local detention facilities, as defined in Section 832.10, pursuant to subdivision (g) under policies to be developed by the Local Detention Monitor.

(c) When requested by the Governor, the Senate Committee on Rules, the Speaker of the Assembly, or a Board of Supervisors by a resolution, the Local Detention Monitor shall initiate an audit or review of policies, practices, and procedures of the local detention facility pursuant to subdivision (g). Following a completed audit or review, the Local Detention Monitor may perform a followup audit or review to determine what measures the department implemented to address the Local Detention Monitor's findings and to assess the effectiveness of those measures.

(d) (1) Upon completion of an audit or review pursuant to subdivision (c), the Local Detention Monitor shall prepare and submit a written report, which may be held as confidential and disclosed in confidence, along with all underlying materials the Local Detention Monitor deems appropriate, to the Board of State and Community Corrections, the audited local detention facility, and the requesting entity in subdivision (c).

(2) The Local Detention Monitor shall also prepare a public report. When necessary, the public report shall differ from the complete written report only in the respect that the Local Detention Monitor shall have the discretion to redact or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution related to the review, compromise the safety and security of staff, inmates, or members of the public, or where disclosure of the information is otherwise prohibited by law, and to decline to produce any of the underlying materials. Copies of public reports shall be posted on ~~the board's~~ **Board of State and Community Corrections'** internet website.

(3) The board may call upon the local detention facility to respond at a regularly scheduled meeting to discuss the audit findings or report.

(e) The Local Detention Monitor shall, during the course of an audit or review, identify areas of full and partial compliance or noncompliance with local detention facility policies and procedures, specify deficiencies in the completion and documentation of processes, and recommend corrective actions, including, but not limited to, additional training, additional policies, or changes in policy, as well as any other findings or recommendations that the Local Detention Monitor deems appropriate.

(f) The Local Detention Monitor shall, in consultation with the board and the Department of Finance, develop a methodology for producing a workload budget to be used for annually adjusting the Local Detention Monitor's budget, beginning with the budget for the 2025–26 fiscal year.

(g) The Local Detention Monitor shall have authority of public oversight of a local detention facility in matters relating to both of the following:

(1) In-custody deaths.

(2) Delivery of medical and mental health care.

(h) In conducting the audits authorized pursuant to this section, the Local Detention Monitor shall apply objective, clinically appropriate, and metric-oriented evaluation.

(i) The Local Detention Monitor shall not hire a person known to be considered a suspect or subject in an investigation being conducted by a federal, state, or local agency.

(j) The Local Detention Monitor shall not destroy any papers or memoranda used to support a completed review within three years after a report is released.

(k) Except as provided in subdivision (l), all books, papers, records, and correspondence of the office pertaining to its work are public records subject to Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code and shall be filed at any of the regularly maintained offices of the ~~Inspector General~~ **Local Detention Monitor**.

(l) The following books, papers, records, and correspondence of the Local Detention Monitor pertaining to its work are not public records subject to Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code, nor shall they be subject to discovery pursuant to any provision of Title 3 (commencing with Section 1985) of Part 4 of the Code of Civil Procedure or Chapter 7 (commencing with Section 19570) of Part 2 of Division 5 of Title 2 of the Government Code in any manner:

(1) All reports, papers, correspondence, memoranda, electronic communications, or other documents that are otherwise exempt from disclosure under all other applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers' Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act of 1977, and the provisions of Section 832.7, relating to the disposition notification for complaints against peace officers.

(2) Any papers, correspondence, memoranda, electronic communications, or other documents pertaining to any audit or review that has not been completed.

(3) Any papers, correspondence, memoranda, electronic communications, or other documents pertaining to internal discussions between the Local Detention Monitor and the Local Detention Monitor's staff, or between staff members of the Local Detention Monitor, or any personal notes of the Local Detention Monitor or the Local Detention Monitor's staff.

(4) All identifying information, and any personal papers or correspondence from any person requesting assistance from the Local Detention Monitor, except in those cases where the Local Detention Monitor determines that disclosure of the information is necessary in the interests of justice.

(m) The Local Detention Monitor, or any employee or former employee of the Local Detention Monitor, shall not divulge or make known in any manner not expressly permitted by law to any person not employed by the Local Detention Monitor any particulars of any record, document, or information the disclosure of which is restricted by law from release to the public. This prohibition is also applicable to any person who has been furnished a draft copy of any report for comment or review or any person or business entity that is contracting with or has contracted with the Local Detention Monitor and to the employees and former employees of that person or business entity or the employees of any state agency or public entity that has assisted the **Local Detention Monitor** ~~Inspector General~~ in connection with duties authorized by this chapter.

(n) Notwithstanding any other law, the Local Detention Monitor during regular business hours or at any other time determined necessary by the Local Detention Monitor, shall have access to and authority to examine and reproduce any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property of the local detention facility in connection with duties authorized by this chapter. Any officer or employee of any agency or entity having these records or property in their possession or under their control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Local Detention Monitor or the Local Detention Monitor's authorized representative.

(o) In connection with duties authorized by this chapter, the Local Detention Monitor or the Local Detention Monitor's authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity to the same extent that employees or officers of that agency or public entity have access. No provision of law, memorandum of understanding, or any other agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure pursuant to subdivision (n). Access, examination, and reproduction consistent with the provisions of this section shall not result in the waiver of any confidentiality or privilege regarding any records or property.

(p) An officer or person shall not fail to or refuse to permit access, examination, or reproduction, as required by this section.

(q) The Local Detention Monitor may require any employee or contractor of the local detention facility to be interviewed on a confidential basis. Any employee or contractor requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Local Detention Monitor or the Local Detention Monitor's designee. The Local Detention Monitor shall have the discretion to redact the name or other identifying information of any person interviewed from any public report issued, where required by law or where the failure to redact the information may hinder prosecution or an action in a criminal, civil, or administrative proceeding, or where the Local Detention Monitor determines that disclosure of the information is not in the interests of justice. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. When conducting an

investigation into allegations that an employee of the local detention facility engaged in misconduct relating to issues under subdivision (g), the Local Detention Monitor shall comply with Sections 3303, 3307, 3307.5, 3308, 3309, and subdivisions (a) to (d), inclusive, of Section 3309.5 of the Government Code, except that the Local Detention Monitor shall not be subject to the provisions of any memorandum of understanding or other agreement entered into between the employing entity and the employee or the employee's representative that is in conflict with, or adds to the requirements of, Sections 3303, 3307, 3307.5, 3308, 3309, and subdivisions (a) to (d), inclusive, of Section 3309.5 of the Government Code.

(r) Notwithstanding Section 10231.5 of the Government Code, the Local Detention Monitor shall report annually to the Governor and the Legislature a summary of its reports. The summary shall be posted on the **Board of State and Community Correction's** ~~Board of State and Community Corrections's~~ internet website and otherwise made available to the public upon its release to the Governor and the Legislature. The summary shall include, but not be limited to, significant problems discovered by the office, and whether recommendations the office has made have been implemented.

(s) (1) The requirement for submitting a report imposed under subdivision (r) is inoperative on January 1, 2028, pursuant to Section 10231.5 of the Government Code.

(2) A report to be submitted pursuant to subdivision (r) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 4. The Legislature finds and declares that Section 3 of this act, which adds Section 6034 to the Penal Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This section balances the public's right to access information with the need to protect sensitive and confidential information, particularly during a potential ongoing investigation, and to maintain robust oversight over local detention facilities relating to in-custody deaths and the delivery of health care to individuals in custody.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: July 11, 2023
Chief Counsel: Sandy Uribe

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

SB 596 (Portantino) – As Amended July 3, 2023

SUMMARY: Creates a new crime of threatening or harassing a school employee off school premises or after school hours and expands the crime of materially disrupting classroom or school activities. Specifically, **this bill**:

1) Expands the misdemeanor offense which makes it unlawful for a parent, guardian, or other person to materially disrupt or cause substantial disorder to classwork or extracurricular activities to include causing substantial disorder at any meeting of the governing board of a school district, the governing body of a charter school, a county board of education, or the state board.

2) Makes it a misdemeanor for any adult to subject a school employee to harassment or to make a credible threat against that employee or a member of their family while the employee is away from a school site or after school hours for reasons related to the employee's course of duties, as specified.

3) Defines the following terms for purposes of these offenses:

   a) "School employee" means "any employee or official of a school district, a charter school, a county office of education, a county board of education, the state board, or the department."

   b) "Course of conduct" means "a pattern of conduct composed of two or more acts occurring over a period of time, however short, evidencing a continuity of purpose." Constitutionally protected activity is not included within the meaning of "course of conduct."

   c) "Harassment" means "a knowing and willful course of conduct directed at a specific person that seriously alarms, torments, or terrorizes the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person."

   d) "Credible threat" means "a verbal, written, or electronic communication, a communication implied by a pattern of conduct, or a combination of a verbal, written, or electronic communication and conduct, made with the specific intent to place the person that is the target of the communication in reasonable fear for their safety or the safety of their family, that, on its face and under the circumstances in which it is made, expresses serious intent to commit an act of unlawful violence, and is made by an individual that possesses the apparent ability to carry out the act so as to cause the person who is the

target of the communication to reasonably be in a sustained state of fear for their safety or the safety of their family. A credible threat does not require the individual making the communication to actually carry out the act." Constitutionally protected activity is not included within the meaning of "credible threat."

EXISTING LAW:

1) States that any parent, guardian, or other person whose conduct in a place where a school employee is required to be in the course of their duties materially disrupts classwork or extracurricular activities or involves substantial disorder is guilty of a misdemeanor, and provides graduated penalties for subsequent convictions with mandatory minimum time periods of incarceration. (Ed. Code, § 44811.)

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

3) States that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of their immediate family is guilty of stalking. A first offense is punishable by imprisonment in county jail for not more than one year, or by imprisonment in the state prison. (Pen. Code, § 646.9, subd. (a).)

4) Defines the following terms as it relates to the elements of the crime of stalking:

   a) "Harass" means "engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose." (Pen. Code, § 646.9, subd. (e).)

   b) "Course of conduct" means "two or more acts occurring over a period of time, however short, evidencing a continuity of purpose." Constitutionally protected activity is not included within the meaning of "course of conduct." (Pen. Code, § 646.9, subd. (f).)

   c) "Credible threat" means "a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section." Constitutionally protected activity is not included within the meaning of

"credible threat." (Pen. Code, § 646.9, subd. (g).)

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

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

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "No one should be threatened or harassed for providing academic instruction in accordance with California state law. Actions that incite fear amongst school employees who are teaching pursuant to state standards are counterproductive, unacceptable and potentially dangerous. Unfortunately, these incidents do not solely occur while educators are at their respective school sites; some also receive threats in off campus settings. SB 596 will ensure that educators can safely continue to help their students thrive in supportive and inclusive classroom environments, unencumbered by fear and intimidation."

2) **Politics in Education**: Several hot button issues have strained parent-school relations in recent years. During the height of the COVID-19 pandemic, there were differing opinions related to the need for mask and vaccine mandates which at times resulted in verbal altercations, and even assaults, between parents and school officials. For example, a father of a student at Sutter Creek Elementary verbally accosted the principal and assaulted a teacher after school because of the mask requirement. (*Parent Accused of Assaulting Amador County Teacher Banned from Campus*, CBS News Sacramento, Aug. 16, 2021, https://www.cbsnews.com/sacramento/news/parent-sutter-creek-teacher-assault/ [as of July 2, 2023].) In addition to political tensions arising from COVID-19 protocols, there have been rising tensions over school curricula, ranging from instruction over subjects such as critical race theory, LGBTQ rights, and book bans. For example, last month a fight broke out at a Glendale school district meeting which was to discuss inclusion of LGBTQ curriculum. (*Fights Break Out Amid Glendale School Board Meeting on Pride Curriculum,* V. Chow, https://ktla.com/news/local-news/fights-break-out-amid-glendale-school-board-meeting-on-pride-curriculum/ [as of July 2, 2023].)

   The intent of this bill is to protect school employees from this conduct. This bill would make it unlawful for an adult to harass or make a credible threat against a school employee when the threat takes place off the school premises or after school hours. This bill would define "school employee" as any employee or official of a school district, a charter school, a county

office of education, a county board of education, the state board, or the Department of education.[1] But as discussed below, there are multiple existing criminal laws available to prosecute such conduct.

Additionally, there are other professions which have also faced increased harassment in recent years due to COVID-19 policies or other controversial or political issues. For example, the Los Angeles Times recently reported on a survey detailing the harassment of doctors and biomedical researchers during the COVID-19 pandemic. (*I Have Over 30 Threats to Rape, Kill, or Assault Me': Being a Doctor on Social Media*, G. Errico, Los Angeles Times, June 28, 2023, https://www.latimes.com/science/story/2023-06-28/being-a-doctor-on-social-media-i-have-over-30-threats-to-rape-kill-or-assault-me [as of July 2, 2023].) No one should be subject to harassment because of duties related to their employment, but should the Legislature confer special benefits on school employees? Does this legislation create a slippery slope for creating even more crimes protecting against harassment and threats based on profession?

3) **Elements Required for Criminal Threat Prosecutions**: Existing law, Penal Code section 422, already prohibits making a credible threat against another person. In order to convict a person under the current criminal threat statute the prosecutor must prove the following:

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

   b) that the defendant made the threat;

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

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

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

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

   This bill seeks to create the more specific crime of criminal threats directed at school employees for reasons related to their employment when the threat takes place off the school premises or after school hours. But existing law applies to all criminal threats which will result in death or great bodily injury, regardless of the victim's occupation, the location, the time, or the reason the threat is made.[2]

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[1] This bill does not cover employees or officials of a private school.
[2] The statute applies to anyone who makes such a threat, not just adults, as this bill would do.

4) **Elements Required for Stalking Prosecutions**: Stalking is generally understood as repeated threatening behavior that is intended to place the subject of the stalking in reasonable fear for their safety or the safety of their family. In order to convict a person under the current stalking statute, Penal Code section 646.9, the prosecutor must prove the following:

   a) The defendant willfully and maliciously harassed or willfully, maliciously, and repeatedly followed another person; and

   b) The defendant made a credible threat with the intent to place the other person in reasonable fear for their safety, or for the safety of their immediate family. (See CALCRIM No. 1301; see also *People v. Falck* (1997) 52 Cal.App.4th 287, 297-298.)

   The crime of stalking requires either repeated following or harassment which necessarily includes multiple acts. (*People v. Jantz* (2006) 137 Cal.App.4th 1283, 1292-1293; *People v. Heilman* (1994) 25 Cal.App.4th 391, 400) "Repeated . . . simply means the perpetrator must follow the victim more than one time. The word adds to the restraint police officers must exercise, since it is not until a perpetrator follows a victim more than once that the conduct rises to a criminal level." (*People v. Heilman, supra*, 25 Cal.App.4th at 400.)

   The stalking statute defines "harasses" as engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. (Pen. Code, § 646.9, subd. (e).) The statute defines "course of conduct" as "two or more acts occurring over a period of time, however short, evidencing a continuity of purpose." (Pen. Code, § 646.9, subd. (f).) The stalking statutes defines a "credible threat" as "a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat." (Pen. Code, § 646.9, subd. (g).)

   This bill defines those words practically identically, showing once again that this conduct is already covered by existing law.

5) **Particularization of Crimes**: As noted above, school employees, like all other California residents, are protected against criminal threats, regardless of the time of day they occur or where they occur. (Pen. Code, § 422.) Similarly, school employees are protected against harassment and stalking, as are as all other California residents. (Pen. Code, § 646.9.) In addition, the Penal Code makes it a misdemeanor for a person to contact another, via phone or by means of electronic communication, with the intent to annoy or harass, and address that person with obscene language or with language threatening to inflict injury. (See Pen. Code, § 653m.)

   Further, school employees have additional protections based on their occupation that most California residents do not. Penal Code section 71 makes it a crime to threaten school officers and employees with the intent to deter them from doing an act by means of directly

communicating a threat. And the Education code makes it a misdemeanor for a person to "materially disrupt" or "cause substantial disorder" classwork or extracurricular activities where a school employee is required to be in the course of the performance of their duties. (Ed. Code, § 44811, subd (a).)

Thus, there are at least five existing criminal statutes to cover harassment or threats directed at school employees. Since the offensive conduct this bill seeks to address can already be prosecuted in a number of different ways, creating this new crime is unnecessary.

Former Governor Brown cautioned against the particularization of crimes in several of his veto messages, stating:

"Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

"Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

"Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."

Of note, two bills that were vetoed because the conduct was already criminal were SB 110 (Fuller) and SB 456 (Block), of the 2015-2016 Legislative Session, both dealing with school threats.

6) **Recent Relevant Supreme Court Case Law**: On June 27, 2023, the United States Supreme Court decided *Counterman v. Colorado* (2023) 600 U.S. __ [2023 U.S. LEXIS 2788], a case deciding what constitutes a "true threat" and what test should be applied to determine if a statement or conduct rises to the level of a true threat.

In *Counterman, supra*, the defendant's stalking conviction was based on hundreds of messages sent to the victim over Facebook. Counterman never met the victim and she never responded to any of his messages. While some of the messages were benign, others suggested Counterman might be surveilling the victim, and others expressed anger and threats of harm. The conviction was based solely on the repeated Facebook communications. (2023 U.S. LEXIS 2788, *6-7.) Counterman argued that the conviction should be overturned because the statements were not true threats and so were protected under the First Amendment. (*Id.* at *8.)

The Supreme Court noted that the Colorado courts had used an objective, reasonable person standard to determine if Counterman had made a threat. (2023 U.S. LEXIS 2788, *8.) The question before the Court was "whether the First Amendment still requires proof that the defendant had some subjective understanding of the threatening nature of his statements." (*Id.* at *5.) The Court answered the question in the affirmative. (*Id.* at *9.) The Court reasoned that reliance on an objective standard would sometimes result in self-censorship because people would be worried about how their statements would be perceived. (*Id.* at *12-15.) To prove this subjective understanding, the Court further held that a mental state of

recklessness is sufficient. In the threats context, recklessness means "that a speaker is aware 'that others could regard his statements as' threatening violence and 'delivers them anyway.'" (*Id.* at *18.)

As in Colorado, California courts have applied an objective reasonable-person standard to determine if statements constitute a criminal threat or whether it is protected under the First Amendment. The California Supreme Court has stated, "'When a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection.'" (See *People v. Toledo* (2001) 26 Cal.4th 221, 233, quoting *In re M.S.* (1995) 10 Cal.4th 698, 710.) As noted above, under the new U.S. Supreme Court precedent, going forward prosecutors will have to show that the defendant knew that others could perceive a statement made threatened violence and yet the defendant uttered it anyway.

However, under California law, to establish a conviction for criminal threats under Penal Code section 422, prosecutors have already also had to prove subjective mens rea-- that defendant intended that the statement is to be taken as a threat, even if there is no intent of actually carrying it out. (See CALCRIM 1300.) Similarly, under California law, prosecutors also have had to prove subjective mens rea for stalking based on threats, namely that "the defendant made a credible threat with the intent to place the other person in reasonable fear for their safety, or for the safety of their immediate family." (See CALCRIM No. 1301; see also *People v. McCray* (1997) 58 Cal.App.4th 159, 172 ["The crimes with which appellant was charged required proof of his intent to place Michelle in fear for her safety or that of her family.... (§ 646.9, subd. (a))."].)

7) **Expansion of Existing Crime of Causing Disruption or Disorder to Classwork or Extracurricular Activities**: As noted above, Education Code section 44811 criminalizes a person whose conduct in a place where a school employee is required to be disrupts classwork or extracurricular activities or involves substantial disorder. This bill would expand application of this statute to also criminalize such conduct at a school board meeting, and a county board of education meeting, or state board of education meeting. This bill would also clarify that a "school employee" is defined as "any employee or official of a school district, a charter school, a county office of education, a county board of education, the state board, or the department."

It should be noted, however, that neither this bill nor existing law define what it means to "materially disrupt" or "involve substantial disorder." Lacking definitions, these terms raise potential due process concerns.

The Fifth Amendment to the U.S. Constitution prohibits the taking of a person's liberty under a criminal law that is so vague it fails to provide adequate notice of the conduct it proscribes or allows for arbitrary enforcement. A criminal statute must give fair warning of the conduct that it makes criminal. (*Bouie v. Columbia* (1964) 378 U.S. 347, 350-351.) "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." (*United States v. Harriss* (1954) 347 U.S. 612, 617.)

The vagueness doctrine, which derives from the due process concept of fair notice, "bars the government from enforcing a provision that 'forbids or requires the doing of an act in terms so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.'" (*People v. Hall* (2017) 2 Cal.5th 494, 500.) A statute is unconstitutionally vague if it fails to provide adequate notice of the proscribed conduct or lacks "sufficiently definite guidelines . . . in order to prevent arbitrary and discriminatory enforcement." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106-1107.)

There is an argument to be made that these terms fail to give adequate notice of the proscribed conduct and also lack sufficient guidelines of what qualifies as a material disruption or a substantial disorder. Would yelling loudly qualify? Would speaking out of turn? Would holding offensive posters?

8) **Argument in Support**: According to the *California Teachers Association*, "SB 596 provides any parent, guardian, or other person interfering with a school employee's daily life away from a schoolsite or after school hours for reasons related to the employee's course of duties is guilty of a misdemeanor punishable by a fine or not less than $500, nor more than $1,000, or by imprisonment in a county jail not exceeding one year, or by both imprisonment and the fine.

"Our CTA members believe school employees should be safe from aggressive and violent behaviors as well as physical, verbal, and psychological abuse. There are documented increases in the number of confrontational activities faced by school employees. We believe all efforts to establish practices and protocols guaranteeing the safety of school employees must be immediate and far-reaching. Such efforts benefit the school community by impacting teacher retention and recruitment and ensuring appropriate conduct within the community-at-large."

9) **Argument in Opposition**: According to the *Foundation Against Intolerance & Racism*, "We advocate for the safety and security of all educators, and we also believe deeply that parents and legal guardians have a constitutionally-protected right to be engaged in constructive dialogue and raise concerns surrounding their children's education. We have observed a trend in recent years of attempts to remove parents and caregivers from conversations about their children's education, and we fear that SB 596 may be part of this concerning effort.

"If passed, SB 596 will inappropriately expand the scope of California Education Code Section 44811, which makes it a criminal misdemeanor to unlawfully harass or threaten school employees. Your committee should not refer SB 596 to a full Assembly vote because: (i) existing law already adequately protects school employees; (ii) if passed, it will have a chilling effect on the protected speech of concerned citizens; and (iii) it is unconstitutionally vague.

"Your committee should not refer SB 596 to a full Assembly vote because it is duplicative of existing law that is successfully used to protect school employees. Section 44811 of the California Education Code already makes it a criminal misdemeanor for individuals in certain settings to engage in conduct that materially disrupts classwork or extracurricular activities, or which involves substantial disorder. Additionally, other California laws exist to otherwise prohibit the unlawful harassment of individuals. The existing laws have the ability

to appropriately criminalize threatening and harassing conduct, and can be relied upon to deter this type of unlawful behavior. The amendments to Section 44811 called for in SB 596 are unnecessary and risk giving the appearance of being part of an effort to chill constitutionally-protected speech.

"If passed, SB 596 is likely to curtail open discourse around important issues that impact the citizens of California. FAIR condemns violence, threats, and harassment of any kind. We believe deeply in the importance of a strong partnership between schools, parents, and families. Especially during times of significant cultural division, children look up to the adults in their lives to model for them how to properly engage in constructive dialogue. The importance of having honest and often difficult conversations is crucial to our society's ability to work through disagreements, to address legitimate concerns, and to ultimately find the truth of any given matter. When measures like SB 596 are implemented that discourage open and honest conversations or attempt to criminalize protected speech, it becomes nearly impossible to engage in necessary dialogue.

"Finally, SB 596 should not be allowed to move out of committee because it is unconstitutionally vague, and therefore risks violating the substantive due process rights of all California citizens. The proposed law would make "harassment" of a school employee a criminal misdemeanor, but it utilizes overly-vague language in defining what that term means….

"The proposal before you is unworkable and carries with it substantial risk of violating the constitutional rights of Californians. That risk, paired with the duplicative and unnecessary nature of SB 596, calls into question the actual intentions behind it. We support the rights of all Californians to live in a state where they do not fear for their safety or security, and where they are confident their government will uphold their constitutional rights. SB 596 does nothing to meaningfully advance these interests."

10) **Related Legislation**:

a) SB 485 (Becker), makes it a felony to use, or threaten to use, force, violence, or coercion or intimidation to prevent, or attempt to prevent an elections official, their staff, or a member of a precinct board from performing any duty related to conducting an election. SB 485 will be heard in this Committee today.

b) SB 796 (Alvarado-Gil), creates a new crime of threatening a school or place of worship, punishable as an alternate felony-misdemeanor. SB 796 is pending in this committee.

c) SB 89 (Ochoa Bogh), expands the crime of stalking to include making a credible threat with the intent to place a person in reasonable fear for the safety of their pet, service animal, emotional support animal, or horse. SB 89 will be heard in this Committee today.

11) **Prior Legislation**:

a) SB 1273 (Bradford), of the 2021-2022 Legislative Session, would have eliminated criminal penalties for causing a willful disturbance during school or at a school meeting if it was committed by a student. SB 1273 was not heard in the Assembly Education

Committee.

b) AB 907 (Grayson), of the 2019-2020 Legislative Session, was substantially similar to SB 796. AB 907 was held in the Senate Appropriations Committee.

c) AB 2768 (Melendez), of the 2017-2018 Legislative Session, was similar to AB 907 (Grayson). AB 2768 was held in the Assembly Appropriations Committee.

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California School Administrators
California Association of Joint Powers Authorities
California Federation of Teachers AFL-CIO
California School Employees Association
California Teachers Association
Glendale Teachers Association
Glendale Unified School District
Glendaleout
Los Angeles County Office of Education
Torrance Unified School District
YWCA Glendale and Pasadena

Opposition

ACLU California Action
California Family Council
California Parents Union
Chico First; Chico Stewards for Parks and Waterways
Defendingconstitutionalrights.com (DCR)
Foundation Against Intolerance & Racism
Foundation Against Intolerance & Racism, Los Angeles Chapter
Our Duty

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

Date of Hearing: July 11, 2023
Chief Counsel: Sandy Uribe

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

SB 601 (McGuire) – As Amended May 18, 2023

As Proposed to be Amended in Committee

SUMMARY: Establishes a mandatory fine of $5,000 for contractors who violate home improvement contract requirements in declared disaster areas, and extends the statute of limitations to prosecute misdemeanors related to permitting the unlawful use or lending of a contractor's license. Specifically, **this bill**:

1) Provides that if specified home improvement contract violations occur in an area for which a state of emergency is proclaimed, or for which an emergency or major disaster is declared by the federal government, the court shall impose the maximum permissible fine of $5,000.

2) Allows a prosecution for the following misdemeanor crimes pertaining to the use of contractor licenses, to be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later:

   a) Lending the person's license to any other person or knowingly permitting the use thereof by another; and

   b) Knowingly permitting any unlawful use of a license issued to the person.

EXISTING LAW:

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

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

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

4) Provides for specific statutes of limitations for misdemeanor violations of certain offenses in the Business and Professions Code pertaining to contractors. (Pen. Code, § 802, subd. (d).)

5) States that misdemeanor violations of specified offenses shall be commenced within three years after the date of discover, or within three years after the completion of the offense, whichever is later, including:

a) The unlawful practice of law or false advertising as an attorney;

b) Unlawful activities by licensee offering to perform a mortgage loan modification;

c) Acting as a real estate broker, real estate salesperson, or mortgage loan originator without a license, or false advertising as such; and,

d) Failure to satisfy specified notice requirements in mortgage loan modifications and other unlawful practices related to mortgage loan modifications. (Pen. Code, § 802, subd. (e).)

6) Provides that, notwithstanding any other law, a criminal prosecution for engaging in the business of a contractor without a license shall be filed, within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last. (Bus. & Prof. Code, § 7028, subd. (g).)

7) States that a person who engages in the business or acts in the capacity of a contractor without a license in an area for which a state of emergency is proclaimed, or for which an emergency or major disaster is declared by the federal government, is punishable by imprisonment in a county jail not exceeding one year, a fine of up to 1,000, or, by both; or alternatively by imprisonment in the county jail for 16 months, or for 2, or 3 years, or by a fine of up to $10,000, or both. (Bus. & Prof. Code, § 7028.16.)

8) Provides that failure of a licensed contractor or a person subject to licensure, or their agent or salesperson, to comply with specified home improvement contract requirements, including the following, is cause for discipline:

a) The contract must be in writing and include the agreed contract amount in dollars and cents. The contract amount must include the entire cost of the contract, including profit, labor, and materials, but not finance charges.

b) If a downpayment will be charged, the downpayment cannot exceed $1,000 or 10 percent of the contract amount, whichever amount is less.

c) Except for a downpayment, a contractor cannot request nor accept payment that exceeds the value of the work performed or material delivered. This prohibition includes advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services. (Bus. & Prof. Code, § 7159.5, subd. (a).)

9) States that a violation of the above requirements is a misdemeanor punishable by a fine of $100 to $5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. (Bus. & Prof. Code, § 7159.5, subd. (b).)

10) Specifies that any person who does any of the following with regard to a license issued by a board or bureau under the jurisdiction of the Department of Consumer Affairs is guilty of a misdemeanor:

a) Displays or causes or permits to be displayed or has in the person's possession either of the following:

i) A canceled, revoked, suspended, or fraudulently altered license; or

ii) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

b) Lends the person's license to any other person or knowingly permits the use thereof by another.

c) Displays or represents any license not issued to the person as being the person's license.

d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

e) Knowingly permits any unlawful use of a license issued to the person.

f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in the person's possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact. (Bus. & Prof. Code, § 119.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Let me be clear, the golden state continues to face unprecedented disasters such as mega fires, earthquakes and floods. Thousands of Californians have lost their homes in these devastating disasters. After losing everything, survivors then begin the challenging task of rebuilding their homes and lives. With so much loss, some homeowners turn to contractors offering great deals, but that unfortunately have little to no experience building homes. Losing a home is tough enough – but ending up with an inexperienced contractor – or worse, a contractor who intentionally takes a job knowing they cannot finish it – has made the rebuilding process, and the healing process, incredibly traumatic. To address these issues SB 601, will increase the statute of limitations for the unlawful use of a license to three years. SB 601 ensures that contractors who work in disaster declared areas are held accountable for their actions and that disaster survivors have the confidence that their homes will be properly rebuilt."

2) **Criminal Fines and Addition of Penalty Assessments**: Under existing law, the court may impose a fine ranging from $100 to $5,000 if a person is convicted of specified home improvement contract violations. As proposed to be amended in committee, this bill would require the court to impose the maximum $5,000 fine, if the same violations occur in a declared disaster area.

   There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined $5,000 as the maximum fine proposed by this bill, the following penalty assessments would be imposed under the Penal Code and the California Government Code:

Penal Code 1464 assessment:	$ 5,000 ($10 for every $10)
Penal Code 1465.7 surcharge:	1,000 (20% surcharge)
Penal Code 1465.8 assessment:	40 ($40 fee per offense)
Government Code 70372 assessment:	2,500 ($5 for every $10)
Government Code 70373 assessment:	30 ($30 per misdemeanor/felony)[1]
Government Code 76000 assessment:	3,500 ($7 for every $10)
Government Code 76000.5 assessment:	1,000 ($2 for every $10)
Government Code 76104.6 assessment:	500 ($1 for every $10)
Government Code 76104.7 assessment:	2,000 ($4 for every $10)

Based on these calculations, the total payment owed when the maximum fine is imposed by the court would be $20,570.

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

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

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.

Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

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

In *Stogner v. California* (2003) 539 U.S. 607, the United States Supreme Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence

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[1] This offense is a misdemeanor, and so this amount would not apply.

unavailable." (*Id.* at p. 615.)

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

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

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

For most types of offenses, the statute of limitations begins to run on the day that the offense was actually committed. However, the statute of limitations period does not commence as to continuing offenses until the entire course of conduct is complete. (*People v. Zamora*, *supra*, 18 Cal.3d 538.) And in cases involving crimes such as fraud or embezzlement the statute of limitations may begin to run at the point that the offense is discovered. (See e.g. Pen. Code, § 803, subd. (c).)

Existing law already contains several specific statutes of limitations for discreet misdemeanor violations of the Contractors State License Law, commencing with section 7000 of the Business and Professions Code, ranging from one year to four years. (See Pen. Code, § 803, subd. (d).)

This bill would extend the statute of limitation to three years from the date of discovery or after completion of the offense, whichever is later, to misdemeanor violations involving lending a contractor's license to another person or giving another permission to use the license, and knowingly permitting any unlawful use of a contractor's license.

In this respect, it should be noted that Business and Professions Code specifies the length of time for the Contractors State Licensing Board (CSLB) should strive to complete a complaint investigation. The statutory goal is 180 days or six months from receipt of a complaint to completion of the investigation; for cases that are more complex the statutory goal is one year. (Bus. & Prof. Code, § 7011.7.) Will extending the statute of limitations in these types of cases create a disincentive for the CSLB to ignore their statutory goals on completing investigation because the entities know that cases will still be able to be prosecuted?

4) **Argument in Support**: According to the *Contractors State Licensing Board*, "This bill would increase the statute of limitations for misdemeanor violation of unlawful use of a license from one year from the date of the violation, to three years from the date of discovery. As California continues to experience severe weather events that result in damage to residential property, CSLB conducts outreach with the California Office of Emergency Services to educate homeowners about contractor licensing requirements. However, a consumer cannot protect themselves by checking a license if the unlicensed contractor uses the valid license of another, often with the licensee's permission.

"Consumers who are recovering after a disaster don't often file a complaint immediately because they do not have a concerns with their contractor until construction is under way. Investigating complex fraud issues or contractual arrangements can take more than six months. Consequently, the current statute of limitations prevents CSLB from pursuing criminal action in these cases, making the only option administrative disciplinary action, which is not as effective a deterrent."

5) **Related Legislation**: SB 690 (Rubio) extends the statute of limitations for the crime of domestic violence from 5 years to 15 years. SB 690 will be heard in this committee today.

6) **Prior Legislation**:

   a) AB 2216 (Nakanishi), Chapter 586, Statutes of 2004, required that prosecution of misdemeanor violations of specified law relating to the regulation and licensure of contractors must be commenced within either one, two, three, or four years after the commission of the offense, depending on the offense.

   b) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extends the statute of limitations for the crime of concealing an accidental death to no more than four years after the concealment.

REGISTERED SUPPORT / OPPOSITION:

Support

California Surety Federation
Contractors State License Board

Opposition

None submitted.

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

Amended Mock-up for 2023-2024 SB-601 (McGuire (S))

Mock-up based on Version Number 97 - Amended Senate 5/18/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 7159.5 of the Business and Professions Code is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by their agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment shall not exceed one thousand dollars ($1,000) or 10 percent of the contract amount, whichever amount is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a downpayment, the contractor shall neither request nor accept payment that exceeds the value of the work performed or material delivered. The prohibition prescribed by this paragraph extends to advance payment in whole or in part from any lender or financier for the performance or sale of home improvement goods or services.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant

to Sections 8400 and 8404 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the statement regarding the downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of Section 7159, the details and statement regarding progress payments specified in paragraph (9) of subdivision (d) of Section 7159, or the Mechanics Lien Warning specified in paragraph (4) of subdivision (e) of Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control. Notwithstanding any other law, a licensee shall be licensed in this state in an active status for not less than two years prior to submitting an Application for Approval of Blanket Performance and Payment Bond as provided in Section 858.2 of Title 16 of the California Code of Regulations as it read on January 1, 2016.

(b) (1) ~~(A)~~ A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by their agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment. **If a violation occurs in a location damaged by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States, the court shall impose the maximum fine.**

~~(B) If a violation described in subparagraph (A) occurs in a location damaged by a natural disaster for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States, that violation is a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifteen thousand dollars ($15,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.~~

(2) (A) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(B) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(C) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) (1) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, defined as the overall capability of the defendant to reimburse the costs, or a portion of the costs, including consideration of, but not limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position, provided that the court shall not consider a period of more than one year from the date of the hearing for purposes of determining the reasonably discernible future financial position of the defendant.

(C) The likelihood that the defendant will be able to obtain employment within one year from the date of the hearing.

(D) Any other factor that may bear upon the defendant's financial capability to reimburse the county for costs.

(2) In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

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

SEC. 2. Section 802 of the Penal Code is amended to read:

802. (a) Except as provided in subdivision (b), (c), (d), or (e), prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under 14 years of age shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

(d) Prosecution of a misdemeanor violation of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall be commenced as follows:

(1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the Business and Professions Code, within one year of the commission of the offense.

(2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4, 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee only), 7159.14 (licensee only), 7161, and 7189 of the Business and Professions Code, within two years of the commission of the offense.

(3) With respect to Sections 7027.3 and 7028.16 of the Business and Professions Code, within three years of the commission of the offense.

(4) With respect to Sections 7028, 7159.5 (nonlicensee only), and 7159.14 (nonlicensee only) of the Business and Professions Code, within four years of the commission of the offense.

(e) **(1)** Prosecution for a misdemeanor violation of Section ~~119~~, 6126, 10085.6, 10139, or 10147.6 of the Business and Professions Code or Section 2944.6 or 2944.7 of the Civil Code shall be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

(2) Prosecution for a misdemeanor violation of subdivisions (b) and (e) of Section 119 of the Business and Professions Code, by parties licensed or subject to licensure pursuant to Chapter 9, Division 3 of that code, shall be within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: July 11, 2023
Chief Counsel: Sandy Uribe

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

SB 690 (Rubio) – As Introduced February 16, 2023

SUMMARY: Extends the statute of limitations for the crime of domestic violence from 5 years to 15 years. Specifically, **this bill**:

1) States that, notwithstanding any other law, a prosecution for the offense of domestic violence as proscribed by Penal Code section 273.5 may be commenced within 15 years of the crime.

2) Provides that this statute of limitations applies only to crimes that were committed on or after January 1, 2024, and to crimes for which the statute of limitations that was in effect before January 1, 2024 has not expired as of that date.

EXISTING LAW:

1) Provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, someone with whom the person has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child, is guilty of domestic violence. (Pen. Code, § 273.5.)

2) Defines "traumatic condition" as "a condition of the body, such as a wound, or external or internal injury, … whether of a minor or serious nature, caused by a physical force." (Pen. Code, § 273.5. subd. (d).)

3) Punishes domestic violence by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to $ 6,000 or by both that fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)

4) Establishes a five-year statute of limitations for domestic violence. Provides that the five-year statute of limitations only applies to crimes that were committed on or after January 1, 2020, and to crimes for which the statute of limitations that was in effect prior to January 1, 2020, has not lapsed as of that date. (Pen. Code, § 803.7.)

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

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

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

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

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

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

11) Provides that notwithstanding any other time limitations, if other provisions extending the statute of limitations for sex crimes do not apply, prosecution for a felony offense requiring sex offender registration shall be commenced within 10 years after commission of the offense. (Pen. Code, § 801.1, subd. (b).)

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

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

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Survivors of domestic violence often need years to overcome their trauma and build the courage to report their abuse. A common factor in all stories for victims includes a deep-rooted trauma and paralyzing fear that comes from their experience. This bill will allow more time for domestic violence victims to heal and come forward, by extending the statute of limitations to 15 years to report their abuse. Victims of abuse, often times can end up without a home or any resources due to the financial intimate partner dependency element in the relationship, or even worse, it could be fatal. In the U.S., an average of 50 women are shot to death by their intimate partners every month, and many more are injured. By allowing more time to report abuse, we provide survivors with sufficient time to heal and come forward while also mitigating the escalation of domestic violence cases that may result in a tragic death."

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

   The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and repose. The statute of limitations protects

persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.

Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

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

In *Stogner v. California* (2003) 539 U.S. 607, the United States Supreme Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

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

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

> determination that society views the crime as the most serious. (*People v. Turner*, *supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

For most types of offenses, the statute of limitations begins to run on the day that the offense was actually committed. However, the statute of limitations period does not commence as to continuing offenses until the entire course of conduct is complete. (*People v. Zamora*, *supra*, 18 Cal.3d 538.) And in cases involving crimes such as fraud or embezzlement the statute of limitations may begin to run at the point that the offense is discovered. (See e.g. Pen. Code, § 803, subd. (c).)

Until January 1, 2020, the statute of limitations to prosecute a criminal case of felony domestic violence was three years. (*People v. Sillas* (2002) 100 Cal.App.4th Supp. 1, 5.) However, SB 273 (S. Rubio), Chapter 546, Statutes of 2019, extended the statute of limitations for this crime to five years. (See Pen. Code, § 803.7.) This extension was based on the recognition that in some cases there are reasons why a victim of domestic violence might not immediately report the crime to law enforcement, such as emotional manipulation, financial insecurity, or having no place to go. However, it should be noted that, initially SB 273 sought a much longer statute of limitations and that the longer statute would only apply in limited circumstances. Ultimately, the Legislature decreased the proposed statute of limitation to the current five years.

This bill would extend the statute of limitations in domestic violence cases even further to 15 years. This statute of limitations would be equally applicable whether or not the crime was being charged as a felony or a misdemeanor, and regardless of the circumstances. Notably, for any cases occurring after the new five-year statute of limitations, there is still 1.5 years available on the current statute of limitations. Based on this, it is unclear why the statute of limitations needs to be further extended.

It bears repeating, that as noted above, there is a strong public policy against extending the statute of limitations. Memories fade as time passes. Evidence that might have been gathered by the police is lost. Witnesses move or die. Fairness and due process demand prosecution be commenced in a reasonable time so the accused may be able to gather evidence to prove his or her innocence. And despite its traumatic nature, domestic abuse does not fall within the type of crimes that would normally warrant extension. The domestic abuse statute, Penal Code section 273.5, prohibits the willful infliction of corporal injury resulting in a traumatic condition upon a victim with which the offender has a *specified domestic relationship*. So, the identity of the perpetrator is not at issue. Moreover, domestic

abuse is not the type of crime where the person does not discover until a later date that the crime has occurred. As a general matter, most people know that a battery is criminal conduct. In fact, if a victim of abuse is taking photographs of sustained injuries, the victim recognizes that criminal conduct has occurred. It seems a rejection of firmly rooted public policy to further significantly extend the statute of limitations in this type of case.

3) **Ex Post Facto:** In *Stogner v. California, supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.)

   This bill states that it the provisions eliminating the statute of limitations for the specified crimes will apply either only to crimes committed after its effective date, or to crimes for which a statute of limitations that was in effect before its effective date has not run as of that date. In other words, the bill extends current limitations periods, but does not try to revive time-barred cases. Therefore, there do not appear to be any ex post facto concerns raised by this bill.

4) **Argument in Support**: According to the *California District Attorneys Association*, "Victims of domestic violence often hide their abuse – and may do so for years on end. Currently, when this happens justice cannot be served through prosecution due to the short statute of limitations. Having the ability to reach back 15 years will help us hold abusers accountable and provide substantial justice for victims.

   "CDAA supports SB 690 because it protects victims and survivors by providing them with more time to come forward and seek the justice they deserve."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "SB 690 would extend the current five year statute of limitations for misdemeanors and felonies to 15 years for domestic violence. This five-year statute of limitations for domestic violence was just enacted in 2019 (SB 273). Previously the statute of limitations for misdemeanor domestic violence was one year and three years for felonies.

   "Nothing has happened in the intervening 3-1/2 years since SB 273 became effective that warrants upsetting the careful balancing of interests by the Legislature in 2019. We strongly oppose SB 690's extension of the statute of limitations for domestic violence prosecutions. The extension of the statute of limitations will result in the conviction of innocent people, is bad public policy and wastes scarce resources that could be better spent on evidence based and effective strategies to end domestic violence.

   "Criminal statutes of limitations in the United States date back to colonial times, with the first such statute appearing as early as 1652. The statutes' fundamental purpose is to protect people accused of crimes from having to face charges based on evidence that may be unreliable, and from losing access to the means to defend themselves. The United States Supreme Court has stated that statutes of limitations are considered 'the primary guarantee against bringing overly stale criminal charges' and that they 'protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the

passage of time…' Likewise, the California Supreme Court has noted that statutes of limitations 'encourage the swift and effective enforcement of the law, hopefully producing a stronger deterrent effect.'

"With the passage of time, memories fade, witnesses die, records and biological evidence are lost or destroyed. All of this makes it more likely that an innocent person will be wrongly convicted.

"Statutes of limitations also serve the purpose of encouraging swift investigations and prosecutions. Given the incidence of domestic violence in the United States and California, proponents of SB 690 rightly complain that relatively few domestic violence cases are actually investigated and prosecuted in California. The primary reason for this is not because of statutes of limitations. Rather, the failure to investigate and prosecute domestic violence results from choices made about allocation of resources and priorities and lingering ignorance about the generational harms of domestic violence. Extending the statute of limitations will do nothing to address those obstacles."

6) **Related Legislation**: SB 601 (McGuire), among other things, extends the statute of limitations for a violation of various prohibitions related to a license, certificate, permit or registration issued by the Department of Consumer Affairs from one year to three years. SB 601 is pending hearing in the Assembly Committee on Business and Professions.

7) **Prior Legislation**:

   a) SB 273 (S. Rubio), Chapter 546, Statutes of 2019, provides that, notwithstanding any other law, a prosecution for the crime domestic violence prosecuted under Penal Code section 273.5 may be commenced within five years of the crime.

   b) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extends the statute of limitations for the crime of concealing an accidental death to no more than four years after the concealment.

   c) SB 813 (Leyva), Chapter 777, Statutes of 2016, eliminated the statute of limitations for specified sex crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Advocates for Child Empowerment and Safety
Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Federation of Teachers AFL-CIO
California Police Chiefs Association
California Protective Parents Association
Claremont Police Officers Association
Corona Police Officers Association
Crime Victims Alliance

Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Marjaree Mason Center
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
San Francisco Public Defender

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

Date of Hearing: July 11, 2023
Counsel: Cheryl Anderson

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

SB 749 (Smallwood-Cuevas) – As Introduced February 17, 2023

SUMMARY: Removes the deadline to file petitions for relief for persons seeking reduction of prior felony convictions to misdemeanors as authorized by Proposition 47. Specifically, **this bill**:

1) Removes the deadline for filing a petition for recall and resentencing for offenses reduced to a misdemeanor by Proposition 47.

2) Contains an urgency clause.

EXISTING LAW:

1) Authorizes a person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under Proposition 47 had it been in effect at the time of the offense to petition for a recall of sentence before the trial court that entered the judgment of conviction in their case to request resentencing of the offense as a misdemeanor. (Pen. Code, § 1170.18, subd. (a).)

2) Provides that upon receiving the petition for recall and resentencing, the court shall determine whether the petitioner meets specified criteria. If the petitioner satisfies the criteria, the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor. A person who has one or more prior disqualifying convictions or is required to register as a sex offender is not eligible for relief. (Pen. Code, § 1170.18, subds. (b) & (i).)

3) Authorizes a court to deny a petition for a recall of sentence, if the court in the exercise of its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to the public safety. In exercising its discretion, the court may consider all of the following:

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

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

   c) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (Pen Code, § 1170.18, subd. (b)(1)-(3).)

4) Defines "unreasonable risk of danger to the public safety" to mean an unreasonable risk the petitioner will commit a new "violent" felony, as specified. (Pen. Code, § 1170.18, subd. (c).)

5) Provides that a person who is resentenced shall be given credit for time served and shall be subject to parole for one year following completion of their sentence, unless the court, in its discretion, as part of the resentencing order, releases the person from parole. (Pen. Code, § 1170.18, subd. (d).)

6) Allows a person who has completed their sentence for a conviction of a felony who would have been guilty of a misdemeanor under the provisions of Proposition 47 if it would have been in effect at the time of the offense, to apply to have the felony conviction designated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).)

7) Requires a petition for recall and resentencing to be filed before November 4, 2022, or at a later date upon a showing of good cause, except as specified. (Pen. Code, § 1170.18, subd. (j).)

8) Provides that any felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (Pen. Code, § 1170.18, subd. (k).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 749 allows counties to use Proposition 47's original more streamlined process for qualified individuals to file petitions to seek records reclassification or resentencing that lapsed this past year. A felony conviction can follow an individual and hinder their ability to find gainful employment and stable housing for the rest of their life. Under Proposition 47, more than a million Californians have had the opportunity to reduce old, low-level, non-violent felonies on their record to misdemeanors, allowing them to move on from their past and move on with their lives. Unfortunately, while Prop 47 offered the most efficient and streamlined mechanism for providing this relief, that process is no longer available. County courts are now required to make a finding of 'good cause,' which is undefined in code, to approve this kind of records relief, which leaves the state with no consistent way to ensure these rulings are fair."

2) **Proposition 47:** 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% of voters approved Proposition 47. (http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf)

   Proposition 47 reduced the penalties for certain drug and property crimes and required that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. 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.)

Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also 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.

3) **Time Limit for Filing for Relief under Proposition 47:** Proposition 47 also authorized defendants who were serving sentences for felonies that were now misdemeanors under the proposition to petition for resentencing, with prohibitions on relief that apply to persons with specified prior sex crimes for which registration is required and especially egregious serious felonies. Persons who had completed a sentence for such an offense were authorized to petition to reduce the convictions to misdemeanors. Felony convictions resentenced or reclassified as misdemeanors under the proposition are considered misdemeanors for all purposes, except that such relief does not permit the person to own, possess, or have in his or her custody or control any firearm. The initiative required persons seeking relief to file a petition within three years of the effective date of the initiative. The deadline specified in the initiative was November 5, 2017.

   In 2016, this filing deadline was amended by AB 2765 (Weber), Chapter 767, Statutes of 2016. AB 2765 provided an extended deadline of November 4, 2022, or at a later date upon showing of good cause.

   SB 1178 (Bradford), of the 2021-2022 Legislative Session, would have removed the deadline and contained an urgency clause so that it would have gone into effect before the November 4, 2022 deadline lapsed. On Third Reading on the Assembly Floor, the urgency clause was not adopted and no further action was taken on SB 1178.[1]

   As with SB 1178, this bill would eliminate the deadline to file a petition for sentence reduction of the offenses reclassified as misdemeanors pursuant to Proposition 47. It also contains an urgency clause so that it would go into effect immediately, as the extended deadline has now lapsed.

4) **California Constitutional Limitations on Amending a Voter Initiative**: Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without

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[1] An urgency clause must be passed separately from the bill by a 2/3 vote of each house. (Cal. Const., art. IV, § 8.)

subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

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

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

This bill makes amendments to provisions of law enacted by Proposition 47 that are consistent with and further the intent of this act, specifically allowing people to reduce prior felony convictions to misdemeanors, thus this bill is keyed as requiring a 2/3 vote.

5) **Argument in Support**: According to *Californians for Safety and Justice*, the sponsor of this bill, "Prop. 47 changed the penalty for simple drug possession and five petty theft-related crimes from a felony to a misdemeanor. Resulting State correctional savings are redirected to three distinct local investments aimed at reducing crime and increasing community health and wellness through enhancing diversion opportunities, reducing recidivism, promoting improved outcomes for K-12 students, and supporting crime victims. Reclassifying old felonies to misdemeanors opens many doors that otherwise would remain off-limits – doors to jobs, housing, educational and other opportunities to provide family stability, economic security, and self-sufficiency.

"By eliminating the November 2022 sunset date, SB 749 would ensure that all Californians with eligible low level, non-violent felonies on their record could move past the thousands of permanent restrictions placed on the lives of people living with an old felony conviction. We estimate there are still thousands of individuals that have eligible felony records that could benefit from reclassification. Since the deadline has now passed, otherwise eligible individuals do have redress for record changes only upon a showing of good cause, which was not defined in Prop. 47. Each county will now need to determine what constitutes "good cause." The new process will require additional court workload and additional state costs as

compared to the petition process that was in place for the last eight years.

"CSJ, one of the original co-authors of Prop. 47, continues to proactively promote the opportunity for records reclassification and continues working to advance the larger principles of diversion and reentry. By permanently extending resentencing and record change opportunities under Prop. 47, SB 749 advances greater efficiency for the already overburdened courts and ensures that eligible individuals will continue to benefit from reclassifying their convictions."

6) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "Prop 47 originally gave affected persons three years to seek resentencing on offenses that were reclassified. That three-year window was extended by an additional five years, meaning people had eight years to address qualifying offenses. Additionally, the measure provided that a petition could be brought at any time upon a showing of good cause.

"Offenders have had plenty of time to seek the relief provided by Prop 47, and in fact, are not time limited from continuing to do so assuming they can demonstrate good cause. We should not exacerbate the problems caused by Prop 47 by further limiting consequences for breaking the law."

7) **Prior Legislation**:

a) SB 1178 (Bradford), of the 2021-2022 Legislative Session, was the same as this bill. SB 1178 was returned without further action when the urgency clause failed to be adopted on the Assembly Floor.

b) AB 2765 (Weber), Chapter 767, Statutes of 2016, eliminated the deadline to file petitions for relief for persons seeking reductions of prior felony convictions to misdemeanors under Proposition 47 and authorized the filing of a petition until November 4, 2022, or later upon a showing of good cause.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
A New Way of Life Reentry Project
All of Us or None Orange County
Bend the Arc: Jewish Action
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association (CPDA)
California Religious Action Center
Caravan 4 Justice
Chrysalis
Communities United for Restorative Youth Justice (CURYJ)
Community Coalition

County of Los Angeles Board of Supervisors
Courage California
Ella Baker Center for Human Rights
Faith in Action East Bay
Initiate Justice (UNREG)
Los Angeles County
Los Angeles Regional Reentry Partnership (LARRP)
National Association of Social Workers, California Chapter
Prosecutors Alliance California
Rubicon Programs
Sacramento Youth Advocacy Fellowship Pipeline
San Francisco Public Defender
Seeds for Youth Development
Smart Justice California
Starting Over, INC.
United Core Alliance

Opposition

California State Sheriffs' Association

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

Date of Hearing: July 11, 2023
Chief Counsel: Sandy Uribe

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

SB 796 (Alvarado-Gil) – As Amended April 27, 2023

PULLED BY AUTHOR

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

Date of Hearing: July 11, 2023
Consultant: Elizabeth Potter

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

SB 883 (Committee on Public Safety) – As Amended June 26, 2023

SUMMARY: Makes technical and non-controversial changes to various code sections relating to criminal justice laws. Specifically, **this bill**:

1) Removes the term"exhibition of speed" from the definition of "gross negligence" for purposes of vehicular manslaughter and adds "engaging in a motor vehicle speed contest," as defined.

2) Specifies that participation in an institutional firehouse must also be successful, as specified, to be qualifying for record expungement and makes other nonsubstantive clarifying changes to the existing provision.

3) Clarifies that a violation of the ghost gun prohibition is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000 or both.

4) Makes the report required by the State Public Defender with recommendations on appropriate workloads for public defenders and indigent defense attorneys due January 1, 2025, and extends the repeal of the law to January 1, 2029.

5) Provides that a defendant may demur to the accusatory pleading at any time prior to the entry of a plea when the statutory provision alleged in the accusatory pleading is constitutionally invalid.

6) Requires the California Rehabilitation Oversight Board to submit an annual report to the Governor and Legislature on October 15 regarding incarcerated persons and parolee support services, rather than on September 15.

7) States that any act enacted by the Legislature during the 2023 calendar year that amends this bill shall prevail over this bill, whether the bill is enacted before, or subsequent to, the enactment of this bill.

8) Makes technical or corrective changes.

EXISTING LAW:

1) Defines manslaughter as the unlawful killing of a human being without malice, and includes within the definition three types: voluntary, involuntary, and vehicular. (Pen. Code, § 192.)

2) States that "gross negligence" for purposes of vehicular manslaughter may include, based on the totality of the circumstances, any of the following:

   a) Participating in a sideshow;

   b) An exhibition of speed;

   c) Speeding over 100 miles per hour. (Pen. Code, § 192, subd. (e)(1).)

3) States that an incarcerated person who successfully participates as an incarcerated hand crew member in the California Conservation Camp program or in a county incarcerated hand crew, or participates at a California Department of Corrections and Rehabilitation (CDCR) institutional firehouse is, upon release, eligible for record expungement, as specified. (Pen. Code, § 1203.4b.)

4) States that it is unlawful for a person to purchase, sell, offer to sell, or transfer ownership of any firearm precursor part in this state that is not a federally regulated firearm precursor part (also known as a ghost gun). (Pen. Code, § 30400.)

5) States that a defendant may demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either:

   a) If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, or, if an information or complaint that the court has no jurisdiction of the offense charged therein;

   b) That it does not substantially conform to the provisions of Sections 950 and 952, and also Section 951 in case of an indictment or information;

   c) That more than one offense is charged, except as specified ;

   d) That the facts stated do not constitute a public offense;

   e) That it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. (Pen. Code, § 1004.)

6) Requires the State Public Defender to undertake a study to assess appropriate workloads for public defenders and indigent defense attorneys and to submit a report with their findings and recommendations to the Legislature no later than January 1, 2024. This law is set to be repealed on January 1, 2028. (Gov. Code, § 15403.)

7) Requires the California Rehabilitation Oversight Board to meet at least twice annually, and to regularly examine the various mental health, substance abuse, educational, and employment programs for incarcerated persons and parolees operated by the CDCR. Requires the board to submit an annual report to the Governor and Legislature on September 15 regarding parolee support services including, but not limited to, findings on the effectiveness of treatment efforts, rehabilitation needs of incarcerated persons, gaps in rehabilitation services; and other data as specified. (Pen. Code, § 6141.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Purpose of This Bill**: This is the annual omnibus bill. In past years, the omnibus bill has been introduced by all members of the Committee on Public Safety. This bill is similar to the ones introduced as Committee bills in the past, in that it has been introduced with the understanding that the provisions make only technical or minor substantive but non-controversial changes to the law; and, there is no opposition by any member of the Legislature or recognized group to the proposal. This procedure has allowed for introduction of fewer minor bills and has saved the Legislature time and expense over the years.

2) **Gross Negligence" for Purposes of Vehicular Manslaughter:** Existing law defines "gross negligence" for purposes of vehicular manslaughter. The definition of "gross negligence" includes an exhibition of speed but references Vehicle Code section 23109, subdivision(a) which prohibit speed contests. It is not clear whether the drafters intended to specify Vehicle Code section 23109, subdivision (a) speed contests or Vehicle Code section 23109, subdivision (c) exhibition of speed.

   The bill removes "exhibition of speed" from this definition and adds "engaging in a motor vehicle speed contest" to remove the inconsistency.

3) **Clarification for Successful Completion of Fire Camp:** Penal Code section 1203.4b authorizes expungement of a person's conviction following successful completion of a fire camp. This bill clarifies that participation in an institutional firehouse must also be successful.

4) **Clarifying Punishment for Violation of Ghost Gun Prohibition:** Existing law prohibits a person from purchasing, selling, offering to sell, or transferring ownership of a ghost gun. In 2022, the statute prohibiting a person from purchasing, selling, offering to sell, or transferring ownership of a ghost gun was repealed and a new version was added. While the crimes in the old version were clearly misdemeanors and specified the punishment (imprisonment for up to 6 months and a fine of up to $1000), the new version is silent about punishment and says nothing about whether the crime is a misdemeanor or felony.

   This bill clarifies that a violation of the new version of the statute is a misdemeanor, punishable by imprisonment for up to 6 months in county jail and a fine of up to $1000.

5) **Unconstitutional Allegations:** The California Supreme Court has repeatedly held that Penal Code section 1004 is the proper vehicle for a defendant to challenge a facially unconstitutional allegation. The current language of section 1004 does not, however, expressly state the same, instead referring vaguely to a challenge based on a "legal bar" to prosecution.

   This bill adds when the "the statutory provision alleged in the accusatory pleading is constitutionally invalid." This clarification would make the statute consistent with the Supreme Court's long-standing holding and the requirements of constitutional law. (See, e.g., *People v. Superior Court* (*Caswell*) (1988) 46 Cal.3d, 381 [defendant has the right to demur on constitutional grounds before trial]; *Johnson v. United States* (2017) 576 U.S. 591,

596 [constitutional prohibitions against vagueness "apply not only to statutes defining elements of crimes, but also to statutes fixing sentences"]; *People v. Bow* (1993) 13 Cal.App.4th 1551, 1553 [a demurrer must be sustained when a penalty-enhancing allegation is unconstitutionally vague]; *People v Equarte* (1986) 42 Cal.3d 456, 466 [same]; People v. Thomas (1986) 41 Cal.3d 837, 843 [same].)

6) **Other Changes**: This bill makes a number of other technical or clarifying changes. These changes include deleting erroneous cross-references, revising reporting dates, or making other corrections such as missing words and updating changes in department titles.

7) **Prior Legislation**:

   a) SB 827 (Committee on Public Safety), Chapter 434, Statutes of 2021, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

   b) SB 781 (Committee on Public Safety), Chapter 256, Statutes of 2019, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

   c) SB 1494 (Committee on Public Safety), Chapter 423, Statutes of 2018, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

   d) SB 811 (Committee on Public Safety), Chapter 269, Statutes of 2017, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

   e) SB 1474 (Committee on Public Safety), Chapter 59, Statutes of 2016, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

   f) SB 795 (Committee on Public Safety), Chapter 499, Statutes of 2015, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Elizabeth Potter / PUB. S. / (916) 319-3744