California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

1020 N Ste, Room 111
(916) 319-3744
FAX: (916) 319-3745

AGENDA

Tuesday, June 28, 2022
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN FILE ORDER

1.	SB 107	Wiener	Gender-affirming health care.
2.	SB 834	Wiener	Tax-exempt status: insurrection.
3.	SB 918	Portantino	Firearms.
4.	SB 936	Glazer	California Conservation Corps: forestry training center: formerly incarcerated individuals: reporting.
5.	SB 1468	Glazer	Factual innocence.
6.	SB 986	Umberg	Vehicles: catalytic converters.
7.	SB 1021	Bradford	Vehicles: driving under the influence of alcohol or drugs.
8.	SB 1262	Bradford	Courts: indexes.
9.	SB 1273	Bradford	School safety: mandatory notifications.
10.	SB 1081	Rubio	Disorderly conduct: peeping, recording, and distribution of intimate images.
11.	SB 1087	Gonzalez	Vehicles: catalytic converters.
12.	SB 1089	Wilk	Medi-Cal: eyeglasses: Prison Industry Authority.
13.	SB 1223	Becker	Criminal procedure: mental health diversion.
14.	SB 1427	Ochoa Bogh	Homeless and Mental Health Court and Transitioning Home Grant Programs.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at https://apsf.assembly.ca.gov/. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The hearing room will be open for attendance of this hearing. Any member of the public attending a hearing is encouraged to wear a mask at all times while in the building. The public may also participate in this hearing by telephone. We encourage the public to monitor the committee's website for updates.

Date of Hearing: June 28, 2022
Chief Counsel: Sandy Uribe

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

SB 107 (Wiener) – As Amended June 1, 2022

As Proposed to be Amended in Committee

SUMMARY: Enacts various safeguards against the enforcement of out-of-state anti-transgender laws to protect individuals seeking and providing gender-affirming health care in California. Specifically, **this bill**:

1) States that it is the public policy of this state that an out-of-state arrest warrant for an individual based on violating another state's law against providing, receiving, or allowing their child to receive gender-affirming health care is the lowest law enforcement priority.

2) Prohibits California law enforcement agencies from making or intentionally participating in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against providing, receiving, or allowing a child to receive gender-affirming health care.

3) Prohibits California law enforcement agencies from cooperating with, or providing information to, any individual or out-of-state agency or department regarding lawful gender-affirming health care performed in this state.

4) States that these provisions do not prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming health care, provided that information relating to any medical procedure on a specific individual many not be shared with an out-of-state agency or any other individual.

5) Prohibits, to the fullest extent permitted by federal law, California law enforcement agencies from recognizing any demand for extradition of an individual pursuant to the criminal action under the law of another state that criminalizes allowing a person to receive or provide gender-affirming health care, if that conduct would not be unlawful under California law.

6) States that notwithstanding provisions of law that demand a custodian of records to produce business records pursuant to a subpoena issued in a criminal action, a health care provider, service plan, or contractor shall not release medical information related to the receipt of gender-affirming health care, in response to any foreign subpoena that is based on a violation of another state's law authorizing a criminal action against a person or entity that allowed a child to receive gender-affirming health care.

7) Prohibits a health care provider, service plan, or contractor from releasing medical information related to a person or entity allowing a child to receive gender-affirming care in

response to any civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil action against such a person.

8) Prohibits a health care provider, service plan, or contractor from releasing medical information to otherwise-authorized persons or entities if the information is related to allowing a child to receive gender-affirming care, and the information is being requested pursuant to another state's law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care.

9) Prohibits the issuance of a subpoena by a California court, if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

10) Prohibits an authorized attorney, as specified, from issuing a subpoena if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

11) Confers a California family court with jurisdiction to make an initial child custody determination if the presence of a child in this state is for the purpose of obtaining gender-affirming health care or mental health care.

12) Provides that a California family court has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned, or it is necessary in an emergency to protect the child because the child, or a sibling, or parent is subjected to, or threatened with, mistreatment or abuse, or because the child has been unable to obtain gender-affirming health care or mental health care.

13) States that a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care is against the public policy of this state and prohibits it from being enforced or applied in a case pending in a court in this state.

14) Defines "gender-affirming health care" to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and includes specified examples.

15) Contains a severability clause providing that if any of these provisions is held invalid, the other provisions can still be given effect.

EXISTING STATE LAW:

1) States generally that it is the duty of the Governor to have arrested and delivered to the executive authority of any other state a person charged in that state with a crime, who has fled from justice and is found in this State. (Pen. Code, § 1548.1.)

2) Allows the Governor to refer any demand for extradition to the Attorney General or any prosecutor in California to investigate the demand and to report whether the person should be

surrendered. (Pen. Code, § 1548.3.)

3) Confers discretion to the Governor to grant or deny an extradition demand when the accused is not a fugitive from the demanding state. (Pen. Code, 1549.1.)

4) Establishes procedures for the arrest, arraignment, hearing to confirm identity, detention, and issuance of a Governor's warrant for purposes of extradition. (Pen. Code, §§ 1551.1-1554.1.)

5) States that the above provisions may be cited as the Uniform Criminal Extradition Act (UCEA). (Pen. Code, § 1556.2.)

6) Sets forth the methods for issuing and complying with a subpoena duces tecum issued by the defense in a criminal case requiring the production of documents from a third party. (Pen. Code, § 1326, subds. (b) & (c).)

7) States that when a criminal defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in camera hearing to determine whether or not the defense is entitled to receive the documents. (Pen. Code, § 1326, subd. (c).)

8) Provides that the custodian of records or other qualified witness who was served with a subpoena shall deliver the records to the clerk of the trial court in a sealed envelope. (Evid. Code, § 1560, subds. (b) & (c).)

9) Sets forth a means by which both prosecution and defense witnesses who are located outside the state may be compelled to appear in criminal trials within the state. (Pen. Code, § 1334-1334.6.)

10) Defines "gender affirming health care" to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:

    a) Interventions to suppress the development of endogenous secondary sex characteristics;

    b) Interventions to align the patient's appearance or physical body with the patient's gender identity; and,

    c) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. (Welf. & Inst. Code, § 16010.2, subd. (b)(3)(A).)

EXISTING FEDERAL LAW:

1) Provides that full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state, and that the United States Congress may by general laws prescribe the manner in which such acts, records, and proceedings must be proved, and the effect thereof. (U.S. Const. art. IV, § 1.)

2) Provides that records and judicial proceedings of any court of any such state, territory, or possession, or copies thereof, must be proved or admitted in other courts within the United States and its territories and possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form, and that such acts, records, and judicial proceedings or copies thereof, so authenticated, have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such state, territory or possession from which they are taken. (28 U.S.C. § 1738.)

3) Provides that a person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. (U.S. Const. art. IV, § 2, cl. 2.)

4) Provides that whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of another state, district, or territory to which such person has fled, and produces a copy of an indictment or an affidavit charging the person with a crime, the executive authority of the state, district, or territory to which the person has fled shall cause them to be arrested and delivered to the agent of the demanding state or territory. (18 U.S.C. § 3182.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "SB 107 reduces the harm done to transgender youth and their families by making it clear that other state's laws that punish people for providing or receiving gender-affirming health care is contrary to the public policy of California.

   "SB 107 would prohibit the enforcement of a civil judgment against a person or entity who allows a child to receive gender-affirming health care. Similarly, this bill would also bar health care providers from complying with subpoenas requiring the disclosure of medical information related to gender-affirming health care that interferes with a person's right to allow a child to receive said care.

   "Lastly, SB 107 would prohibit law enforcement agencies from making, or intentionally participating in, the arrest of an individual pursuant to an out-of-state arrest warrant based on another state's law against receiving, or allowing a child to receive, gender-affirming health care."

2) **Background**: There have been recent actions in other states targeting transgender youth, their parents, and medical providers who perform gender-affirming health care. In February 2022, Texas Governor Greg Abbott ordered state child welfare officials to launch child abuse investigations into reports of transgender kids receiving gender-affirming care. (Dey & Harper, *Transgender Texas Kids are Terrified After Governor Orders that Parents be Investigated for Child Abuse*, The Texas Tribune (Feb. 28, 2022): https://www.texastribune.org/2022/02/28/texas-transgender-child-abuse [as of June 19, 2022].) The impacts of Governor Abbott's order were immediate as one Dallas-area program

assisting transgender youth formally stopped offering services shortly after the order. (*Ibid.*) This month, a Texas judge issued a temporary restraining order and temporarily stopped the state from investigating many parents who provide gender-affirming care to their transgender children. Previously, the Texas Supreme Court had blocked the state from investigating one family, but overturned a wider injunction that had stopped the state from investigating other families. (Klibanoff, *Judge Temporarily Blocks Some Texas Investigations Into Gender-Affirming Care for Trans Kids*, The Texas Tribune (June 10, 2022): (https://www.texastribune.org/2022/06/10/texas-gender-affirming-care-child-abuse/ [as of June 19, 2022].)

Next, Alabama Governor Kay Ivey signed several anti-transgender youth bills into law, including one that subjected doctors to ten years in prison for providing gender-affirming health care. (AL SB 184 (Shelnutt) Assigned Act No. 2022-289.) When signing the bill, Governor Ivey noted, "There are very real challenges facing our young people, especially with today's societal pressures and modern culture… I believe very strongly that if the Good Lord made you a boy, you are a boy, and if he made you a girl, you are a girl." (Lyman, *Gov. Kay Ivey Signs Bills Targeting Transgender Youth in Alabama*, Montgomery Advisor (Apr. 8, 2022) available at: https://www.montgomeryadvertiser.com/story/news/2022/04/08/gov-kay-ivey-signs-bills-targeting-alabama-transgender-youth/9516134002 [as of June 19, 2022].)

Several other states, including Ohio (OH HB 454), Kansas (KS HB 2210 & SB 214), and Missouri (MO SB 843 & HB 2649), have bills pending before their legislatures targeting gender-affirming care for transgender youth. (https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/ [as of June 19, 2022].)

This bill would prohibit a health care provider, service plan, or contractor from releasing medical information related to a person allowing a child to receive gender-affirming care in response to a criminal or civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil or criminal action against a person or entity that allows a child to receive gender-affirming health care. This bill additionally would prohibit law enforcement agencies from making, or intentionally participating in, the arrest of an individual pursuant to an out-of-state arrest warrant based on another state's law against receiving or allowing a child to receive gender-affirming health care, as well as prohibit them from recognizing any demand for extradition from another state based on these grounds, to the fullest extent permitted by federal law.[1]

3) **Extradition**: Extradition refers to the legal process of returning fugitives from justice back to the state in which they allegedly committed a crime or violated the terms of their bail, probation, or parole.

Extradition between states is guaranteed by the Extradition Clause of the United States Constitution, which provides, "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the

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[1] This bill has been heard by the Assembly Judiciary Committee. This analysis focuses on the Penal Code provisions.

executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." (U.S. Const. art. IV, § 2, cl. 2.) The Extradition Clause has been implemented by 18 USC § 3182. The Extradition Clause in the Constitution is limited, as it refers only to persons "who shall flee from justice" and requires surrender to the state from which they "fled." So, it covers only persons who committed a crime in one state and then flee from there. (*In re Morgan* (1948) 86 Cal.App.2d 217, 223.)

Thus, for purposes of this bill, extradition under the Constitution and the corresponding federal statute, would apply to a person who violated a law in a state such as Texas or Alabama and then fled to California. Because the extradition provision of this bill prohibits a law enforcement agency from cooperating with an extradition request only to "the fullest extent permitted by federal law," it appears that a California law enforcement agency would be required to extradite that individual.

"The federal constitutional and statutory provisions are not exclusive and the state are free to cooperate with one another by extending interstate rendition beyond that required by federal law." (*In re Cooper* (1960) 53 Cal.2d 772, 775.) Besides the Extradition Clause of the United States Constitution, most states, including California, are also bound by the UCEA, which goes beyond the Constitution and its implementing statute. The UCEA is enforceable within any state that adopts it, whether or not the demanding state has a similar statute. (*In re Morgan*, supra, 86 Cal.App.2d at p. 224.)

Under the UCEA, any person, who while present in the demanding state, commits a crime there and is subsequently found in another state, is a "fugitive from justice" and subject to extradition. (Pen. Code, § 1548.1.) In addition, under the UCEA, someone who commits an act in California (or another state besides the demanding state) that intentionally results in a crime in the demanding statute also may be subject to extradition. (Pen. Code, § 1549.1.)

There are several arguments against extradition that may be made before a magistrate at an extradition hearing, including: that the demanding state's statute that the person has been charged with violating is void on its face, or has been declared void in the demanding state (*In re Cooper*, *supra*, 53 Cal.2d at p. 780), or that the crime charged is not illegal in California.

While the claim that an offense which is criminal in the demanding state is not criminal in California is rarely effective, arguably, in this situation, the Governor may be able to decline to extradite based on this argument. However, even if possible to do so, not fulling obligations under the UCEA raises the possibility that other states may ignore California extradition requests in the future.

4) **Full Faith and Credit Clause**: The Full Faith and Credit Clause is a constitutional provision regulating how courts deal with rulings from other courts and jurisdictions. Specifically, Article IV, Section 1 of the United States Constitution requires every state to give full faith and credit to the public acts (statutes), records, and judicial proceedings of every other state.

   The current jurisprudence seems to provide that determinative judicial proceedings should be enforced in another jurisdiction as evidenced by the Court in *Baker v. General Motors Corp.* (1998) 522 U.S. 222, 233 stating "for claim and issue preclusion purposes…the judgement of the rendering state gains nationwide force." (See also *Mills v. Duryee* (1813) 7 Cranch 481,

484-485 holding that the judgment of a court of one of the states was conclusive evidence in every court within the United States.) Public acts or statutes and state records; however, may not need to be as strictly enforced. (See *Alaska Packers Association v. Industrial Accident Comm.* (1935) 294 U.S. 532; *Adar v. Smith* (5th Cir. 2011) 639 F.3d 146.)[2]

By refusing to recognize the laws and judgments of another state, this bill appears to implicate the Full Faith and Credit Clause. Additionally, by prohibiting a custodian of records (i.e. a health care provider, service plan, or contractor) to produce business records related to the receipt of gender-affirming health care pursuant to a subpoena issued in a criminal action in another state, this bill again likely implicates the provisions of the Full Faith and Credit Clause.[3]

There is a limited exception to these rules concerning laws that violate the public policy of another state. "A court may be guided by the forum State's 'public policy' in determining the *law* applicable to a controversy. [citations] But our decisions support no roving 'public policy exception' to the full faith and credit due *judgments*. [citation] In assuming the existence of a ubiquitous 'public policy exception' permitting one State to resist recognition of another State's judgment, the District Court in the Bakers' wrongful-death action … misread our precedent." (*Baker v. GMC* (1998) 522 U.S. 222, 233-234 [citations omitted], emphasis in original.)

This bill states that, "It is the public policy of the state that an out-of-state arrest warrant for an individual based on violating another state's law against receiving or allowing their child to receive gender-affirming health care is the lowest law enforcement priority." It is unclear whether this statement of public policy (or other California statutes) would be sufficient to argue the full faith and credit clause should not apply for a pending criminal action in the forum state in which there is not yet a judgment in that state.

5) **Argument in Support**: According to *ACLU California Action*, "SB 107 prohibits healthcare providers from sharing medical records regarding the receipt of gender-affirming care, prohibits the enforcement of out-of-state subpoenas seeking such records, provides California courts with jurisdictional guidance on family law relating to a minor receiving gender-affirming care, and reforms California's criminal laws relating to out-of-state criminal statues regarding gender-affirming care, including limiting law enforcement's ability to participate in the arrest of those who violate other state laws that limit access to such care. This bill will help protect the medical privacy rights of TGI [transgender, gender non-conforming, and intersex] youth and their families and reinforce California's continued commitment to protecting TGI youth's access to gender-affirming care.

"States across the country have jeopardized access to gender-affirming care, with Texas governor Greg Abbott equating it to 'child abuse' and a recent Alabama law making it a

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[2] Redpath, *Between Judgment and Law: Full Faith and Credit, Public Policy, and State Records* (2013) 62 Emory L.J. 639.

[3] For a detailed discussion of the application of the full faith and credit clause, see the Assembly Judiciary Committee analysis of June 5, 2022. (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB107)

felony to provide gender-affirming healthcare to minors. Research has found that such measures rely on misleading and inaccurate scientific claims and ignore the widespread consensus regarding the efficacy and safety of gender-affirming care.

"Not only does such legislation make care itself difficult—if not impossible—to access, but it also directly endangers the well-being of TGI youth. Studies have found that more than half of trans youth have seriously considered taking their own life, and that access to gender-affirming care can reduce suicidality and depression by 73%.2 Given that access to gender-affirming care can be a life-or-death issue for many TGI youth across the country, we find that SB 107 will be especially important in protecting TGI youth, their families, and medical providers—regardless of the harmful laws passed by other states." [footnotes omitted.]

6) **Argument in Opposition**: According to the *Protect Child Health Coalition*, "Senate Bill 107 is an extreme over-reaction to modest efforts by other states to prevent harm to minors. SB107 would create a series of unprecedented and dangerous exceptions to California law and customary practice regarding cooperation with other states' legal proceedings. For example, it would forbid the release of medical information, even in a civil or criminal proceeding and even in response to a valid subpoena.

"Even more shocking is what the law says about parental custody determinations. It would actually authorize parental kidnapping (when a non-custodial parent illegally takes a child from the parent who has legal custody) if the purpose of the kidnapping is to subject the child to radical gender transition procedures.

"This bill may well be in violation of the 'full faith and credit' clause of the U.S. Constitution (Article IV, Section 1 says, "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state" [emphasis added]).

"It is unfortunate that California has not acted to protect its own children from the irreversible harm of gender transition medical procedures. But it would be outrageous for California to turn itself into a destination for imposing such harms on children from other states. California should not violate longstanding legal and constitutional principles to prevent other states from protecting their own children."

7) **Related Legislation**:

a) AB 1666 (Bauer-Kahan), declares that a law of another state that authorizes a person to bring a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, is contrary to the public policy of this state. AB 1666 is pending a vote on the Senate Floor.

b) AB 1708 (Kiley), would have repealed the California Values Act and required a law enforcement agency (LEA) to cooperate with federal immigration officials by detaining a person for an immigration hold if a person has a qualifying criminal conviction or arrest. AB 1708 failed passage in this committee.

c) AB 2091 (M. Bonta), prohibits the sharing of specified information in response to subpoenas related to out-of-state anti-abortion statutes or foreign penal civil actions. AB

2091 is pending in the Senate Health Committee.

8) **Prior Legislation**:

a) AB 4 (Ammiano), Chapter 570, Statutes of 2013, enacted the TRUST Act which prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes.

b) SB 54 (De León), Chapter 495, Statutes of 2017, enacted the California Values Act, which further limits the involvement of state and local law enforcement agencies in federal immigration enforcement.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Coalition for Youth
California Department of Insurance
California Nurse Midwives Association
California Public Defenders Association
Children Now
City of Encinitas
City of Long Beach
Equality California
Naral Pro-choice California
National Association of Social Workers, California Chapter
Office of Lieutenant Governor Eleni Kounalakis
Planned Parenthood Affiliates of California

Opposition

California Family Council
Family Watch International
Our Duty
Partners for Ethical Care
Protect Child Health Coalition
Women's Declaration International

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

Amended Mock-up for 2021-2022 SB-107 (Wiener (S))

Mock-up based on Version Number 96 - Amended Assembly 6/1/22
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 56.109 is added to the Civil Code, to read:

56.109. (a) Notwithstanding subdivision (b) of Section 56.10, a provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming health care in response to any civil action, including a foreign subpoena, based on another state's law that authorizes a person to bring a civil action against a person or entity that allows a child to receive gender-affirming health care.

(b) Notwithstanding subdivision (c) of Section 56.10, a provider of health care, health care service plan, or contractor shall not release medical information to persons or entities who have requested that information and who are authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the information is related to a person or entity allowing a child to receive gender-affirming health care, and the information is being requested pursuant to another state's law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care.

(c) For the purposes of this section, "person" means an individual or governmental subdivision, agency, or instrumentality.

(d) For the purpose of this section "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

SEC. 2. Section 2029.300 of the Code of Civil Procedure is amended to read:

2029.300. (a) To request issuance of a subpoena under this section, a party shall submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute making an appearance in the courts of this state.

(b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:

(1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390. No civil case cover sheet is required.

(2) Pay the fee specified in Section 70626 of the Government Code.

(c) When a party submits a foreign subpoena to the clerk of the superior court in accordance with subdivision (a), and satisfies the requirements of subdivision (b), the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(d) A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall incorporate the terms used in the foreign subpoena.

(2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) It shall bear the caption and case number of the out-of-state case to which it relates.

(4) It shall state the name of the court that issues it.

(5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

(e) Notwithstanding subdivision (a), no subpoena shall be issued pursuant to this section if the foreign subpoena would require disclosure of medical information related to sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

(1) For purposes of this subdivision, "sensitive services" has the same meaning as defined in Section 791.02 of the Insurance Code.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

SEC. 3. Section 2029.350 of the Code of Civil Procedure is amended to read:

2029.350. (a) Notwithstanding Sections 1986 and 2029.300, if a party to a proceeding pending in a foreign jurisdiction retains an attorney licensed to practice in this state, who is an active member of the State Bar, and that attorney receives the original or a true and correct copy of a foreign subpoena, the attorney may issue a subpoena under this article.

(b) Notwithstanding subdivision (a), an authorized attorney shall not issue a subpoena pursuant to subdivision (a) if the foreign subpoena would require disclosure of medical information related to

sensitive services or is based on a violation of another state's laws that interfere with a person's right to allow a child to receive gender-affirming health care.

(1) For purposes of this subdivision, "sensitive services" has the same meaning as defined in Section 791.02 of the Insurance Code.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in Section 16010.2 of the Welfare and Institutions Code.

(c) A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall incorporate the terms used in the foreign subpoena.

(2) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(3) It shall bear the caption and case number of the out-of-state case to which it relates.

(4) It shall state the name of the superior court of the county in which the discovery is to be conducted.

(5) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

SEC. 4. Section 3421 of the Family Code is amended to read:

3421. (a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

(d) The presence of a child in this state for the purpose of obtaining gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) subdivision (b) of Section 16010.2 of the Welfare and Institutions Code, is sufficient to meet the requirements of paragraph (2) of subdivision (a).

SEC. 5. Section 3424 of the Family Code is amended to read:

3424. (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse, or because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 3421 to 3423, inclusive. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423, inclusive, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.

SEC. 6. Section 3427 of the Family Code is amended to read:

3427. (a) A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

(2) The length of time the child has resided outside this state.

(3) The distance between the court in this state and the court in the state that would assume jurisdiction.

(4) The degree of financial hardship to the parties in litigating in one forum over the other.

(5) Any agreement of the parties as to which state should assume jurisdiction.

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this part if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

(e) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceeding to pay, in addition to the costs of the proceeding in this state, necessary travel and other expenses, including attorney's fees, incurred by the other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(f) (1) In a case where the provision of gender-affirming health care or gender-affirming mental health care to the child is at issue, a court of this state shall not determine that it is an inconvenient forum where the law or policy of the other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

(2) For the purposes of this section, "gender-affirming health care" and "gender-affirming mental health care" have the same meaning as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

SEC. 7. Section 3428 of the Family Code is amended to read:

3428. (a) Except as otherwise provided in Section 3424 or by any other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless one of the following are true:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction.

(2) A court of the state otherwise having jurisdiction under Sections 3421 to 3423, inclusive, determines that this state is a more appropriate forum under Section 3427.

(3) No court of any other state would have jurisdiction under the criteria specified in Sections 3421 to 3423, inclusive.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subdivision (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 3421 to 3423, inclusive.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subdivision (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this part.

(d) In making a determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section 6211, or for the purposes of obtaining gender-affirming health care or gender-affirming mental health care, as defined by paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code, for the child and the law or policy of the other state limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

SEC. 8. Section 3453.5 is added to the Family Code, to read:

3453.5. (a) A law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care **is against the public policy of this state and** shall not be enforced or applied in a case pending in a court in this state.

(b) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

SEC. 9. Section 819 is added to the Penal Code, to read:

819. (a) It is the public policy of the state that an out-of-state arrest warrant for an individual based on violating another state's law against **providing,** receiving, or allowing their child to receive gender-affirming health care is the lowest law enforcement priority.

(b) California law enforcement agencies shall not make or intentionally participate in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against **providing,** receiving, or allowing a child to receive gender-affirming health care.

(c) No state or local law enforcement agency shall cooperate with or provide information to any individual or out-of-state agency or department regarding the provision of lawful gender-affirming health care performed in this state.

(d) Nothing in this section shall prohibit the investigation of any criminal activity in this state which may involve the performance of gender-affirming health care provided that no information relating to any medical procedure performed on a specific individual may be shared with an out-of-state agency or any other individual.

(e) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

SEC. 10. Section 1326 of the Penal Code is amended to read:

1326. (a) The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by any of the following:

(1) A magistrate before whom a complaint is laid or their clerk, the district attorney or their investigator, or the public defender or their investigator, for witnesses in the state.

(2) The district attorney, their investigator, or, upon request of the grand jury, any judge of the superior court, for witnesses in the state, in support of an indictment or information, to appear before the court in which it is to be tried.

(3) The district attorney or their investigator, the public defender or their investigator, or the clerk of the court in which a criminal action is to be tried. The clerk shall, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by them, for witnesses in the state, as the defendant may require.

(4) The attorney of record for the defendant.

(b) A subpoena issued in a criminal action that commands the custodian of records or other qualified witness of a business to produce books, papers, documents, or records shall direct that those items be delivered by the custodian or qualified witness in the manner specified in subdivision (b) of Section 1560 of the Evidence Code. Subdivision (e) of Section 1560 of the Evidence Code shall not apply to criminal cases.

(c) (1) Notwithstanding subdivision (b), a provider of health care, health care service plan, or contractor shall not release medical information related to a person or entity allowing a child to receive gender-affirming health care in response to any foreign subpoena that is based on a violation of another state's laws authorizing a criminal action against a person or entity that allows a child to receive gender-affirming health care.

(2) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

(d) In a criminal action, no party, or attorney or representative of a party, may issue a subpoena commanding the custodian of records or other qualified witness of a business to provide books, papers, documents, or records, or copies thereof, relating to a person or entity other than the subpoenaed person or entity in any manner other than that specified in subdivision (b) of Section 1560 of the Evidence Code. When a defendant has issued a subpoena to a person or entity that is not a party for the production of books, papers, documents, or records, or copies thereof, the court may order an in camera hearing to determine whether or not the defense is entitled to receive the documents. The court may not order the documents disclosed to the prosecution except as required by Section 1054.3.

(e) This section shall not be construed to prohibit obtaining books, papers, documents, or records with the consent of the person to whom the books, papers, documents, or records relate.

SEC. 11. Section 1548.5 is added to the Penal Code, to read:

1548.5. (a) Notwithstanding any other provision of state law, no state or local law enforcement shall make or intentionally participate in the arrest or recognize any demand for extradition of an individual pursuant to a criminal action related to the law of another state that criminalizes allowing a person to receive or provide gender-affirming health care where that conduct would not be unlawful under the laws of this state to the fullest extent permitted by federal law.

(b) For the purpose of this subdivision "gender-affirming health care" shall have the same meaning as provided in paragraph (3) of subdivision (b) of Section 16010.2 of the Welfare and Institutions Code.

SEC. 12. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 834 (Wiener) – As Amended May 2, 2022

SUMMARY: States that the Franchise Tax Board (FTB) to revoke the tax-exempt status of a charitable organization if the California Attorney General (AG) has determined the nonprofit engaged treason, insurrection, seditious conspiracy, or other specified crimes. Specifically, **this bill**:

1) Finds and declares that:

   a) California grants special status to nonprofit charitable organizations by exempting them from state taxes and allows state income tax deductions for donations made by contributors to certain nonprofits. These tax benefits are extended by the State, at the expense of its taxpayers, to support charitable organizations and the important work they do;

   b) However, as the United States (U.S.) Supreme Court held in *Bob Jones University v. United States* (1983) 461 U.S. 574, entitlement to tax exemption depends on meeting certain common-law standards of charity, namely, that a nonprofit organization seeking tax-exempt status must serve a public purpose and not be contrary to established public policy;

   c) The federal government has defined the crimes of treason, misprision of treason, insurrection, seditious conspiracy, advocating the overthrow of the government, and advocating mutiny by members of the U.S. military;

   d) It is existing policy, and within the authority of the FTB, to apply the same common law principles articulated in *Bob Jones University v. United States (1983) 461 U.S. 574* to the granting of tax-exempt status under California law;

   e) There is well-established procedure for exercising tax exempt status revocations, including the procedure for investigating and remedying the misuse of funds by a charitable organization under the Supervision of Trustees and Fundraisers for Charitable Purposes Act; and,

   f) The FTB has authority under state law to revoke the exempt status of nonprofit organizations inciting or actively engaged in the offenses listed in this bill.

2) Requires the AG, upon determination that a tax-exempt organization has engaged in specified criminal acts, or conspiracies, or may likely violate a specified criminal act, to

notify the FTB of such action.

3) States that, upon notification from the AG, the FTB has the authority to revoke an organization's tax exempt status.

4) Permits the AG and the FTB to prescribe rules, guidelines, procedures, or other guidance to effectuate these provisions.

5) Provides that the authority granted to the FTB to revoke tax exempt status is declaratory of, and does not constitute a change in, existing law.

EXISTING LAW:

1) Exempts organizations that operate for nonprofit purposes from taxes, as specified. (Rev. & Tax Code, § 23701.)

2) Defines "charitable organization" for the purposes of a tax exemption and provides when the tax exempt status can be revoked if the AG notifies the FTB that specified required filings were not made. (Rev & Tax Code, § 23703)

3) Authorizes the FTB to revoke an organization's tax-exempt status under certain circumstances, including when the organization fails to confine its activities to those that allowed it to receive the exemption. (Rev. & Tax Code, § 23777.)

4) Removes an organization's tax-exempt status if that organization:

   a) Carried on propaganda or otherwise attempted to influence legislation; or

   b) Participated or intervened in any political campaign on behalf or opposition to any candidate for public office. (Rev. & Tax Code, § 23704.6.)

5) Allows an organization whose exemption was revoked based on activities outside the scope of its declared purpose to reestablish its exempt status by providing satisfactory proof that the organization has:

   a) Corrected its nonexempt activities;

   b) Will operate in an exempt manner in the future; and,

   c) Pay any taxes that accrued during the period the organization had its exempt status revoked. (Rev. & Tax Code, § 23778.)

6) Allows for the removal of tax exempt status from an organization that has been found to be a terrorist organization. (Rev & Tax Code Sec. 23703.5.)

7) Places the primary responsibility for supervising charitable corporations within the purview of the AGand authorizes the AG to revoke or suspend their registration for specified violations. (Gov. Code, § 12598.)

8) Prohibits a charitable organization from misrepresenting its purpose and specifies that a misrepresentation can occur through words, conduct, or nondisclosure of material facts. (Gov. Code, § 12599.6.)

EXISTING FEDERAL LAW:

1) Exempts organizations that operate exclusively for purposes religious, charitable, scientific, literary, or other specified activities, from taxes. (26 U.S.C.S., § 501(c)(3).)

2) Removes an organization's tax-exempt status if that organization:

   a) Carried on propaganda or otherwise attempted to influence legislation; or,

   b) Participated or intervened in any political campaign on behalf or opposition to any candidate for public office. (26 U.S.C.S., § 504.)

3) Allows for the removal of tax exempt status from an organization that has been found to be a terrorist organization. (26 U.S.C.S., § 501(p).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 834 revokes the California tax-exempt status of a nonprofit organization if the Attorney General determines that the nonprofit has actively engaged in or incited treason, misprision of treason, insurrection, seditious conspiracy, advocating overthrow of the government or the government of any State, or advocating mutiny by members of the military or naval forces of the United States. If the Attorney General finds that a nonprofit organization has incited or actively engaged in an act that is directed and likely to imminently violate one or more of these crimes, they shall notify the Franchise Tax Board (FTB), who shall revoke the nonprofit's tax-exempt status.

   On January 6, 2021, pro-Trump extremists and insurrectionists – incited by the "Big Lie" (the fraudulent notion that the 2020 election was stolen) and then-President Donald Trump – breached the United States Capitol. Five people were killed and hundreds were injured as a result of this insurrection. A variety of individuals and organizations – including nonprofits participated in the events on January 6th. Nonprofits raised millions of tax-free dollars off the "Big Lie" that the 2020 presidential election was stolen.

   SB 834 fills an important gap. While the FTB is currently directed to suspend the tax-exemption of a nonprofit supporting international terrorism, there is no clear authority concerning nonprofits that support insurrection. SB 834 will ensure that nonprofit organizations engaged in insurrection-related offenses will be held to the same standard as those that engage in or support international terrorist activity, and also have their exemption revoked.

   As the United States Supreme Court held in Bob Jones University v. United States (1983), it is permissible for the IRS to deny tax-exempt status to a private school with explicitly racist policies4. The Court held that entitlement to tax exemption depends on meeting certain

common-law standards of charity, namely, that a nonprofit organization seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. Tax-exempt status is a privilege, not a right. Organizations that engage in, or incite the active engagement of insurrection-related offenses – both of which are illegal – should not be given this special status to help them fundraise."

2) **Exempt entities**: Federal law allows an organization to apply with the Internal Revenue Service (IRS) for tax-exempt status when the entity is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and that meet certain other requirements. (26 U.S.C.S, § 501(c)(3).) To keep exempt status, entities must operate within their defined charitable purpose. According to the IRS, "A section 501(c)(3) organization will jeopardize its exemption if it ceases to be operated exclusively for exempt purposes. An organization will be operated exclusively for exempt purposes only if it engages primarily in activities that accomplish the exempt purposes specified in section 501(c)(3). An organization will be disqualified if more than an insubstantial part of its activities does not further an exempt purpose." (*Life Cycle of a Public Charity – Jeopardizing Exemption*. IRS. <https://www.irs.gov/charities-non-profits/charitable-organizations/life-cycle-of-a-public-charity-jeopardizing-exemption#:~:text=A%20section%20501(c),501(c)(3).> [as of Jun. 22, 2022] (*IRS on Charities*).) A 501(c)(3) organization must:

- Refrain from participating in the political campaigns of candidates for local, state, or federal office;
- Restrict its lobbying activities to an insubstantial part of its total activities;
- Ensure that its earnings do not benefit any private shareholder or individual;
- Not operate for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests;
- Not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory;
- Not provide commercial-type insurance as a substantial part of its activities;
- Not have purposes or activities that are illegal or violate fundamental public policy;
- Satisfy annual filing requirements. (*IRS on Charities.*)

In addition to loss of the organization's tax-exempt status, activities that constitute any personal gain by one of the organization's members, or misuse of the organization's assets may result in the imposition of penalty excise taxes on individuals benefiting from excess benefit transactions. (*Ibid.*) A tax-exempt organization that does not file a required annual return or notice for three consecutive years automatically loses its tax-exempt status. (*Ibid.*)

California generally conforms to the tax-exempt status provided by the IRS. (*SB 834 Analyses*. FTB. <https://www.ftb.ca.gov/tax-pros/law/legislation/2021-2022/SB834-030922-040622-041822-050222.pdf> [as of Jun. 22, 2022] (*FTB SB 834 Analysis*).) However, state law permits the FTB to determine independently if an exempt organization preforms the actions required to maintain their tax-exempt status, and revoke its status for state purposes if it does not. (Rev. & Tax Code, § 23777.)

The AG regulates charities and the professional fundraisers who solicit on their behalf. (*Charities*. AG. <https://oag.ca.gov/charities#:~:text=The%20Attorney%20General%20regulates%20charitie

s,through%20fraud%20or%20other%20means.> [as of Jun. 22, 2022].) The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means. (*Ibid.*)

3) **January 6, 2021, and the Tax Exempt Organization Oath Keepers' Plot to Commit Sedition**: According to the United States Department of Justice, "Thursday, Jan. 6, 2022, marks one year since the attack on the U.S. Capitol that disrupted a joint session of the U.S. Congress in the process of affirming the presidential election results. The government continues to investigate losses that resulted from the breach of the Capitol, including damage to the Capitol building and grounds, both inside and outside the building. According to a May 2021 estimate by the Architect of the Capitol, the attack caused approximately $1.5 million worth of damage to the U.S. Capitol building." (*One Year Since the Jan. 6 Attack on the Capitol*. US Department of Justice (US DOJ). <https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol> [as of Jun. 22, 2022].)

   As of Dec. 30, 2021, the criminal charges filed in connection with the Capitol riot are as follows:

   - More than 225 defendants have been charged with assaulting, resisting, or impeding officers or employees, including over 75 individuals who have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer.
   - Approximately 140 police officers were assaulted Jan. 6 at the Capitol, including about 80 U.S. Capitol Police and about 60 from the Metropolitan Police Department.
   - Approximately 640 defendants have been charged with entering or remaining in a restricted federal building or grounds.
   - Approximately 40 defendants have been charged with conspiracy, either: (a) conspiracy to obstruct a congressional proceeding, (b) conspiracy to obstruct law enforcement during a civil disorder, (c) conspiracy to injure an officer, or (d) some combination of the three.
   - Approximately 165 individuals have pleaded guilty to a variety of federal charges, from misdemeanors to felony obstruction, many of whom will face incarceration at sentencing.
   - Approximately 145 have pleaded guilty to misdemeanors. Twenty have pleaded guilty to felonies. (*One Year Since the Jan. 6 Attack on the Capitol*. US Department of Justice (US DOJ). <https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol> [as of Jun. 22, 2022].)

   The attack on the US Capitol was in connection to former President Donald Trump's continuous claims that the 2020 presidential elections were fraudulent; commenting on what occurred on January 6, 2021, ex-President Trump tweeted, "These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!" (*Did Trump Tweet 'Stay Peaceful' on Day of Capitol Riot?* Snopes. <https://www.snopes.com/fact-check/trump-peaceful-capitol/> [as of Jun. 22, 2022].) Since then more than fifty lawsuits alleging election fraud or irregularities that were brought by ex-President Trump and his allies have been dismissed by state and federal judges, including some judges who were appointed by Trump. (*Fack check: Courts have dismissed multiple lawsuits of alleged electoral fraud presented by Trump*

campaign. Reuters. <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1> [as of Jun. 22, 2022].) The United States Supreme Court, including three justices appointed by ex-president Trump, repeatedly denied post-election lawsuits alleging fraud. (*Supreme Court Kills Last Trump Election Lawsuit*. Forbes. (2021) <https://www.forbes.com/sites/alisondurkee/2021/03/08/supreme-court-kills-last-trump-election-lawsuit/?sh=232641a17637> [as of Jun. 22, 2022].)

In terms of the Oath Keepers organization and their role during the attack on the Capitol, the United States Department of Justice has stated that the Oath Keepers are a large but loosely organized collection of individuals, some of whom are associated with militias, with a focus on recruiting current and former military, law enforcement, and first-responder personnel. (*Leader of North Carolina Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress for Efforts to Stop Transfer of Power Following 2020 Presidential Election*. US DOJ. (2022) <https://www.justice.gov/opa/pr/leader-north-carolina-chapter-oath-keepers-pleads-guilty-seditious-conspiracy-and-obstruction> [as of Jun. 22, 2022] (*US DOJ on Oath Keepers*).)

In total, ten members of the Oath Keepers, including their founder and leader, Elmer Rhodes, have been charged with seditious conspiracy. (*Id.*) As of May 4, 2022, three of those members have plead guilty to seditious conspiracy and obstruction. (*Ibid.*) The most recent member to plead guilty was William Wilson, the regional leader from a North Carolina chapter. (*Ibid.*) He admitted under oath that he agreed to take part in a plan to, "use force to prevent, hinder and delay the execution of the laws of the United States governing the transfer of presidential power." (*Ibid.*)

On January 5, 2021, Wilson drove to Washington D.C. with an AR-15 style rifle, 9-millimeter pistol, approx. 200 rounds of ammunition, body armor, a camo combat uniform, pepper spray, a large walking stick for use as a weapon, and a pocketknife. (*Ibid.*) He stayed in a hotel with other Oath Keeper leaders, they stored their weapons there and were prepared to retrieve them if called upon to do so. (*Ibid.*) Prosecutors said that members of the group discussed a "QRF" or quick reaction staging force to place firearms and other weapons to use in case of "worst case scenarios." (*Oath Keepers leader Stewart Rhodes tried to contact Trump during the January 6 Capitol attack, court documents reveal*. CBS News. (2022) <https://www.cbsnews.com/news/oath-keepers-stewart-rhodes-donald-trump-january-6-court-documents/> [as of Jun. 22, 2022].) Wilson bypassed barricades to enter the capitol armed with a pocketknife, while also wearing a neck gaiter and beanie hat to mask his appearance. (*US DOJ on Oath Keepers*.) He later threw his cellphone into the Atlantic Ocean to prevent law enforcement from discovering that he participated in the conspiracy. (*Ibid.*) Wilson faces up to 20 years for seditious conspiracy and obstruction of an official proceeding. (*Ibid.*)

According to the IRS, the Oath Keepers received tax-exempt status on June 4, 2018. (*Oath Keepers United*. IRS. <https://apps.irs.gov/app/eos/detailsPage?ein=830769850&name=Oath%20Keepers%20United&city=Salem&state=VA&countryAbbr=US&dba=&type=CHARITIES,%20DETERMINATIONLETTERS&orgTags=CHARITIES&orgTags=DETERMINATIONLETTERS> [as of Jun. 22, 2022].) The current status of the group is unclear.

Currently, the FTB and AG could already suspend an organization's tax-exempt status if the organization was engaged in illegal activities or activities outside of the scope of its stated purpose. (Rev. & Tax Code, § 23777, § 23704.6; Gov. Code, § 12598.) For the most part this bill simply restates that and does not result in any substantial assistance to existing law. In fact, this bill states that it is declarative of existing law as it pertains to the authority of the FTB.

This sentiment has been noted by the FTB in its analysis of the bill. (*FTB SB 834 Analysis.*) The FTB did state that this bill, "would create differences between federal and California tax treatment of the entity, as an entity could be considered exempt at the federal level but not at the state level. Such a difference could cause uncertainty for the organization and potential donors." (*FTB SB 834 Analysis*.)

The Senate Governance and Finance Committee also, in analyzing a previous but mostly similar version of the bill, stated, "The Committee may wish to consider the need for the bill when the authority to revoke an exempt organization's status for the illegal activities listed in the bill already exists." It has been made clear above that members of certain organizations, such as the Oath Keepers, had conspired to and committed acts of sedition on Jan. 6, 2021. However, it is also clear that the AG and the FTB has the authority to revoke an organization's tax exempt status for such activities.

4) **Argument in Support**: According to the *Anti-Defamation League*, "In keeping with our mission, ADL has particular expertise in tracking and exposing extremist threats across the ideological spectrum through our Center on Extremism (COE). In the wake of the January 6th 2021 attack on the U.S. Capitol, and the rising tide of hate and extremism across the country, we have become increasingly concerned about the ways in which extremist and hateful groups operating as "charitable" non-profits may be abusing their tax-exempt status to further their violent or hateful objectives. Last year, we released a report on this topic, and also wrote a letter to the IRS to express our concern.

   As indicated in our report, after a cursory investigation, we uncovered evidence that a range of groups may be making misrepresentations in their tax filings in order to secure tax-exempt status in the first instance; engaging in self-dealing by paying their leaders excessive salaries; and/or diverting funds to enrich friends and family members at the expense of the tax-exempt entity itself. In addition, hateful groups with tax-exempt status may be using that status to raise money for violent and/or illegal purposes.

   There are many reasons extremist groups may seek 501(c)(3) or (c)(4) tax-exempt status with the IRS. This status allows groups to raise money or financing while avoiding state and federal income and unemployment taxes. In some cases, 501(c)(3) or (c)(4) organizations can sidestep property taxes, state income taxes, sales taxes, and employment taxes as well.

   But perhaps most importantly, contributions to 501(c)(3) organizations are always tax-deductible. Some donors may also view tax-exempt status as government endorsement, which gives 501(c)(3)'s increased credibility. In some cases, this can have serious consequences, particularly if these organizations are in fact operating for the sole purpose of spreading white supremacist or anti-government hate. Tax-exempt status can also give extremist groups undeserved access to charity fundraising tools like Facebook Donations,

Amazon Smiles and Charity Navigator's "giving basket" function…"

REGISTERED SUPPORT / OPPOSITION:

Support

All Rise Alameda
Anti-defamation League
Building the Base Face to Face
Change Begins With Me Indivisible Group
Cloverdale Indivisible
Contra Costa Moveon
Defending Our Future: Indivisible in Ca
East Valley Indivisibles
El Cerrito Progressives
Feminists in Action (formerly Indivisible CA 34 Womens)
Hillcrest Indivisible
Indi Squared
Indivisible 30/keep Sherman Accountable
Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA 29
Indivisible CA Statestrong
Indivisible Ca-25 Simi Valley Porter Ranch
Indivisible Ca-3
Indivisible Ca-33
Indivisible Ca-37
Indivisible Ca-39
Indivisible Ca-43
Indivisible Ca-7
Indivisible Ca29
Indivisible Ca: Statestrong
Indivisible Claremont / Inland Valley
Indivisible Colusa County
Indivisible East Bay
Indivisible El Dorado Hills
Indivisible Elmwood
Indivisible Euclid
Indivisible Lorin
Indivisible Los Angeles
Indivisible Manteca
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Normal Heights
Indivisible North Oakland Resistance

Indivisible North San Diego County
Indivisible Oc 46
Indivisible Oc 48
Indivisible Peninsula and Ca-14
Indivisible Petaluma
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Francisco
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara
Indivisible Santa Cruz County
Indivisible Sausalito
Indivisible Sebastopol
Indivisible Sf
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Windsor
Indivisible Yolo
Indivisible: San Diego Central
Indivisibles-sherman Oaks
Livermore Indivisible
Mill Valley Community Action Network
Mountain Progressives
Nothing Rhymes With Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Our Revolution Long Beach
Riseup
Rooted in Resistance
San Diego Indivisible Downtown
Sfv Indivisible
Tehama Indivisible
The Resistance Northridge-indivisible
Together We Will Contra Costa
Together We Will/indivisible - Los Gatos
Vallejo-benicia Indivisible
Venice Resistance
Women's Alliance Los Angeles
Yalla Indivisible

2 Private Individuals

Opposition

None Submitted

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

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 918 (Portantino) – As Amended June 13, 2022

SUMMARY: Corrects cross-references to the Dealers' Record of Sale (DROS) fund regarding purchase fees for ammunition and precursor parts, requires concealed carry weapons (CCW) to be owned by the license holder, and makes legislative findings and declarations on the effect of laws restricting the right to publicly carry concealed weapons. Specifically, **this bill**:

1) Finds and declares:

   a) There is a compelling legislative interest in protecting the right to keep and bear arms through clarifying the issuance of carry concealed weapons permits and DROS fund allocations, while also protecting public safety and ensuring other specified fundamental rights are not infringed upon by gun violence;

   b) The Ninth Circuit, sitting en banc, recognized that the governments of England and America, for more than 700 years, have regulated and even prohibited the carrying of concealed firearms in populated or "sensitive" places;

   c) Empirical studies indicate that crime is higher when more people are allowed to carry firearms in public places, with one study showing that states with "right-to-carry" laws saw 13 to 15 percent increases in violent crime 10 years after adopting such laws;

   d) Other studies conclude that states changing from prohibited concealed carry to "shall issue" states experience an increase in gun-related murder rates;

   e) Studies show that states with permissive "right-to-carry" laws experienced higher rates of firearm workplace homicides than states that did not have such laws;

   f) Widespread public carry creates a chilling effect in that it intimidates persons in their exercise of worship, protesting, and voting. A national study indicates that 60 percent of those surveyed said they would be "very unlikely" to attend a protest if guns were present;

   g) Laws such as gun violence restraining orders have prevented mass shootings; and,

   h) Broad public carry laws impede law enforcement's ability to ensure the public's safety because it makes it difficult to discern who the perpetrator is in an active shooter situation.

2) Requires a person to be the licensed owner of the specific firearm for which they possess a CCW license.

3) Requires any local agency issuing a CCW license to confirm that the applicant is the recorded owner of the weapon according to the Department of Justice (DOJ) before that local agency can issue the CCW license.

4) Requires a CCW license to include the licensee's full name, driver's license or identification number, the type of license and its expiration date, the licensee's fingerprints, and the model of the firearm, among other things.

5) Requires a CCW applicant to provide fingerprints to the DOJ any time they apply for a CCW license, regardless of whether they had previously submitted fingerprints to the DOJ.

6) States that the DOJ must outline the manner in which licensing authorities report information regarding the issuance of CCW licenses.

7) Corrects a cross-reference to the DROS fund for ammunition and precursor parts, as defined.

8) Makes non-substantive technical corrections.

EXISTING LAW:

1) States that the sheriff of a county may issue a CCW license upon proof of an applicant's good moral character, good cause for the license, completion of a specified training course, and certain residency requirements. (Pen. Code, § 26150.)

2) States that the head of a city or county's police department may issue a CCW license upon proof of an applicant's good moral character, good cause for the license, completion of a specified training course, and certain residency requirements. (Pen. Code, § 26155.)

3) Provides that any sheriff or police chief may issue a specified CCW license to one of their peace officers upon proof of an applicant's good moral character, good cause for the license, and proof of peace officer status. The sheriff or police chief may consider the applicant's peace officer status for the purpose of issuing a license only under this section of the Penal Code. (Pen. Code, § 26170.)

4) Requires every licensing authority issuing CCW licenses to publish and make available written policies summarizing CCW licensing requirements. (Pen. Code, § 26160.)

5) Requires that the DOJ develop a standard, uniform CCW license to be used throughout the state and requires that the license bear the licensee's name, occupation, residence, business address, age, height, weight, eye color, hair color, reason for desiring CCW, description of the specific firearm authorized under the CCW license which includes the manufacturer name, serial number, and caliber of the firearm. (Pen. Code, § 26175.)

6) Requires an applicant to submit fingerprints to the DOJ before a CCW license can be issued; however, does not require submittal of fingerprints in cases where an applicant has previously applied for a CCW license, or if a current licensee has previously forwarded their

fingerprints to the DOJ. (Pen. Code, § 26185.)

7) States that a licensing authority must report to the DOJ the reasons for issuing, revoking, denying, or denying an amendment to a CCW license. (Pen. Code, § 26225.)

8) Authorizes the DOJ to require firearms dealers to charge each firearm purchaser a fee not to exceed $1, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index. (Pen. Code, § 28225, subd. (a).)

9) Provides that the fee shall be no more than is necessary to fund specified governmental notification and reporting functions including but not limited to DOJ's cost of furnishing specified firearm information, local mental health facility costs pursuant to firearm reporting requirements, and local law enforcement agency costs related to firearm reporting requirements. (Pen. Code, § 28225, subd. (b).)

10) Authorizes the DOJ to charge firearms dealers a fee not exceeding $14 for costs associated with the preparation processing, or filing of forms related to the sale, purchase, acquisition, or other type of transfer of firearms. (Pen. Code, § 28230.)

11) Creates the DROS Special Account of the General Fund and makes available, upon appropriation by the Legislature funds to offset the costs incurred by the DOJ for specified firearms related activities except for activities covered by the DROS Supplemental Subaccount. (Pen. Code, § 28235.)

12) Creates the DROS Supplemental Subaccount within the DROS Special Account of the General Fund to offset costs incurred by the DOJ that are related to the regulatory and enforcement activities on the sale, purchase, manufacture, possession, loan or transfer of firearms, and authorizes the DOJ to charge firearms purchasers a fee in the amount of $31.19 for deposit into the DROS Supplemental Subaccount. (Pen. Code, § 28233.)

13) Provides that, commencing July 1, 2019, the DOJ shall electronically approve the purchase or transfer of ammunition through a vendor, and establishes related guidelines and eligibility criteria. (Pen. Code, § 30370, subds. (a) & (b).)

14) Requires the DOJ to develop a procedure by which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. (Pen. Code, § 30370, subd. (c).)

15) Requires the DOJ to recover costs related to the enforcement activities by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for its DROS process and not to exceed the DOJ's reasonable costs. (Pen. Code, § 30370, subd. (c).)

16) Provides that, commencing July 1, 2022, the DOJ shall electronically approve the purchase or transfer of firearm precursor parts through a vendor, and establishes related guidelines and eligibility criteria. (Pen. Code, § 30470, subds. (a) & (b).)

17) States that, commencing July 1, 2022, licensed firearms dealers and licensed ammunition vendors shall automatically be deemed firearm precursor part vendors, provided they comply with specified requirements. (Pen. Code, § 30485, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, ">

2) **DROS Fee History and Its Relation to Ammunition and Precursor Parts**: The DROS fee was first established in 1982 in order to cover DOJ's cost of performing a background check on firearms purchasers. (*Gentry v. Becerra*, (Mar. 4, 2019, No. 34-2013-80001667 at pg. 2.) Sacramento Sup. Ct., <https://michellawyers.com/wp-content/uploads/2019/09/2019-03-04-Ruling-on-Hearing-on-Petition-for-Writ-of-Mandate-Complaint.pdf> [as of Jun. 20, 2022]; affirmed by *Gentry v. Rodriquez* (2021) Cal. App. Unpub. LEXIS 2004, 2021 WL 1152731.) The initial DROS Fee was $2.25. (*Ibid.*) Over the years, the amount of the DROS Fee increased, and so did the number of activities that it funded. (*Ibid.*) In 1995, the Legislature amended the statute to fix the DROS Fee at $14 and allowed it to be adjusted to account for inflation. (*Ibid.*) In 2004, the DOJ adopted regulations adjusting the fee to $19. (*Ibid.*)

   The DROS fee is one of several fees that is attached to the purchase of a new firearm. In addition, there is a $1 firearm safety fee, and a $5 firearms safety and enforcement fee. (*Department of Justice Fees*. DOJ. (2020) <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/firearms-fees.pdf> [as of Jun. 20, 2022].)

   Although the initial DROS fee was only intended to cover the cost of background checks, subsequent legislation contemplated that DROS funds be used for other purposes, such as enforcement of the Armed Prohibited Persons System (APPS). *Becerra*, *supra*, No. 34-2013-80001667 at 3.) In 2011, SB 819 (Leno), Chapter 743, Statutes of 2011, allowed DOJ to utilize the DROS Account for the additional, limited purpose of funding enforcement of the APPS.

   In 2016, SB 1235 (De Leon), Chapter 55, Statutes of 2016 repealed and reconstructed many provisions of the Penal Code related to ammunition vendors, and established a new regulatory framework for the sale and purchase of ammunition in California. Among these changes was a requirement that DOJ impose a fee to recover its processing and enforcement costs related to ammunition purchase authorizations. (Pen. Code, § 30370.) Under the language of SB 1235, this per-transaction fee was to be set in accordance with the DROS fee, which at the time was still set forth in Penal Code section 28225.

   In 2019, AB 879 (Gipson), Chapter 730, Statutes of 2019 established a new framework to regulate the manufacture, possession and sale of firearm precursor parts. Much of this framework was adapted from the language of SB 1235, including the cost recovery fee. Under AB 879, the DOJ's cost recovery fee for precursor part purchase authorizations was also tied to the DROS fee, which at the time was still set forth in Penal Code § 28225.

In 2019, AB 1669 (Bonta), Chapter 736, Statutes of 2019) increased the DROS fee to $31.19 and restructured it by moving it to a newly enacted code section. According to the DOJ website:

> "AB 1669 adds a new section to the Penal Code, section 28233. Subdivision (b) of that section authorizes a new $31.19 fee for regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms pursuant to any provision listed in section 16580. Because the new fee in section 28233 funds the activities specified previously specified by section 28225, and because this fee is the principal fee charged at the time of each DROS transaction, the Department is naming the fee authorized by section 28233 the 'DROS Fee.'
>
> (*Regulations: Dealer Record of Sale (DROS) Fee (Emergency).*" DOJ. <https://oag.ca.gov/firearms/regs/drosfee> [as of Jun. 20, 2022].)

However, the cross-references to Penal Code section 28225 in SB 1235 and AB 879 were never updated to reflect the changes made by AB 1669. This bill would update the erroneous cross-references.

3) **New Requirements for CCW Licensees**: Recently, the United States Supreme Court issued an opinion striking down New York's proper cause requirements for applicants wishing to obtain a CCW license. (*N.Y. State Rifle & Pistol Assn., Inc. v. Bruen*, (2022) 597 U.S. ___.) The Court stated that New York's CCW issuance regime is similar to California's. (*Id.* at 5-6.) As the opinion is quite new, it is difficult to determine how the lower courts will interpret it. However, the Supreme Court reiterated "that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." (*Id.* at 15; see also *id.* at 8 ["To justify its regulation, the government may not simply posit that the regulation promotes an important interest."].)

   This bill would require that a person be the registered owner of the specific firearm for which they have a CCW license, provide more specific identifying information about the CCW applicant and the firearm, and requires the DOJ to outline the manner in which licensing authorities report on their decisions regarding CCWs. *Bruen* will likely not affect the constitutionality of these provisions, but would likely affect California's current structure regarding CCW licensing.

4) **Argument in Opposition**: According to the *Gun Owners of California*, "It is true that the legislature has a compelling interest in protecting both individual rights and public safety, but the legislature cannot balance one set of rights by diminishing others. The factual record is very clear: no one has been able to produce any instances where lawful CCW holders have committed an inappropriate act with a firearm for many years in California. Lawful CCW holders are not killing, injuring, or traumatizing individuals with acts of gun violence or terrorism. The existing CCW system operated by the California Department of Justice and all the issuing authorities have everything needed for law enforcement to effectively do their job. The proof is that CCW holders in California are among the most law-abiding citizens in the state.

You did quote the rulings of the Ninth Circuit Court of Appeals regarding historical elements of concealed carry laws over the past 700 years in England and America. You also have chosen to define Justice Antonin Scalia's recognition of "sensitive places" in Heller v DC, as descriptive and not as exclusive when he mentioned schools and government buildings. By your definition the legislature can designate any public place as sensitive. That is not what Justice Scalia said. Justice Scalia was specific in his comments regarding schools and government buildings.

Legitimate scientific analysis necessitates that epidemiological studies can only show correlation and association, not causation. Studies designed to show causation are needed, as they are far more rigorous, with double blind examinations so that the potential biases of the investigators cannot influence the finding of the truth. The study cited in finding (c) is not undisputed and in fact, has plenty of critics. Also, since the study was completed, 14 more states have become "right-to-carry" so the data used to conduct the research is woefully out of date and incomplete.

Further, the findings in (d) are gross mischaracterizations of the truth. None of the incidences of the misuse of a firearm cited in this finding were committed by lawful CCW holders in California. Not a single one. The exact opposite is true, as a significant number of legal CCW holders in California have used firearms for lawful self-defense and have thus survived threats of death or great bodily harm.

Again, each of the studies quoted by the author can only show correlation but not causation. An example of this would be that if a statistical study would show that most of the people who filed for divorce also liked bacon, this would be an example of association or correlation. The types of studies cited in this finding would say that it is obvious that eating bacon causes divorce. Although this is a crude and simple example, it is in fact a reflection of the types of conclusions met by these particular studies.

There are also significant problems with finding (h). As previously mentioned, the studies cited are irrelevant given that they were conducted years prior and over a dozen new states have become "right to carry". The fact that this finding attempts to build the case developed by previous studies makes this an irrelevant argument.

Moreover, the bill unfairly classifies 18-year-old Californians as "half-citizens" by denying them the right to protect themselves with a firearm from the threat of great bodily injury or death; this creates an ethical and constitutional problem that is being brushed under the carpet

It is very apparent that this bill is an attempt to preempt the expected ruling from the United States Supreme Court that may in fact end up making every state in the country "shall issue". The provisions requiring renewing CCW holders to submit a new set of fingerprints even though the DOJ already has a set on file, and preventing spouses from having each other's firearms on both of their permits is nothing but punitive. Last I checked, people cannot change their fingerprints, except, of course in the movies. The cost of a new set of fingerprints will be approximately $100, thereby making it more expensive, negatively impacting lower-income applicants to whom $100 is a significant barrier and an unrealistic financial burden."

5) **Related Legislation**: AB 2033 (Smith) would extend the duration for a CCW license from a maximum of two years to four years. AB 2033 was held in this committee.

6) **Prior Legislation**:

   a) AB 879 (Gipson), Chapter 730, Statutes of 2019 established a new framework to regulate the manufacture, possession and sale of firearm precursor parts, and cross-referenced to the DROS fund for specified regulatory and enforcement purposes.

   b) SB 1235 (De Leon), Chapter 55, Statutes of 2016, regulated ammunition vendors through licensing, required background checks for ammunition purchasers, and cross-referenced to the DROS fund for specified regulatory and enforcement purposes.

   c) SB 580 (Jackson), of the 2013-2014 Legislative Session, would have would appropriated the sum of $5,000,000 from the Firearms Safety and Enforcement Special Fund to the DOJ to contract with local law enforcement agencies to reduce the backlog of individuals who are identified by APPS as illegally possessing firearms. SB 580 was held in the Assembly Committee on Appropriations.

   d) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated $24 million from the DROS Special Account to the DOJ to fund enforcement of illegal gun possession by retrieving weapons from prohibited persons, and required the DOJ to report specified information to the Joint Legislative Budget Committee by March 1, 2015 and every March 1 until 2019.

   e) SB 819 (Leno), Chapter 743, Statutes of 2011, authorized the DOJ to use DROS fees to fund the department's firearms-related regulatory and enforcement activities related to the possession of firearms, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

None Submitted

Opposition

Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action

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

Date of Hearing: June 28, 2022
Counsel: Andrew Ironside

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

SB 936 (Glazer) – As Amended June 23, 2022

SUMMARY: Require the California Conservation Corps (CCC), in partnership with the Department of Forestry and Fire Protection (CalFire) and the Department of Corrections and Rehabilitation (CDCR), to establish a forestry training center in northern California and to provide job readiness for entry-level forestry and vegetation management jobs for formerly incarcerated individuals. Specifically, **this bill**:

1) Requires, upon appropriation of the Legislature, the CCC Director, in partnership with CalFire and CDCR, to establish a forestry training center in northern California to provide enhanced training, education, work experience, and job readiness for entry-level forestry and vegetation management jobs.

2) Requires the training center to be established on or before December 31, 2024.

3) Requires the training center to focus on forestry and to include counseling, mentorship, supportive housing, health care, and educational services, as specified.

4) Authorizes that training center to include training modules on the activities identified as priorities for the CCC Reentry Program, as specified.

5) Requires the director to enroll formerly incarcerated individuals at the training center and to prioritize enrollment for those formerly incarcerated individuals who meet either of the following requirements:

    a) Successfully served on a California Conservation Camp program crew and were recommended by the CalFire Director and the Secretary of CDCR, either of which may designate a person from their respective departments to make this recommendation; or

    b) Successfully served on a hand crew at the county level and were recommended for participation by county probation and county fire departments.

6) Authorizes the CCC Director to enroll corpsmembers and local community conservation corpsmembers at the training center, if funding and resources allow.

7) Provides that successful completion of a training program at the training center constitutes qualifying experience for an entry-level forestry or vegetation management position at a state agency.

8) Requires CCC, commencing Dec. 31, 2025, and annually thereafter, to include in the required report to the Legislature a reporting of the information related to formerly

incarcerated individuals enrolled in CCC programs or centers established to serve formerly incarcerated individuals, including, but not limited to, the CCC Reentry Program, the Ventura Training Center, the forestry training center, and any other centers or programs created by CCC to exclusively serve formerly incarcerated individuals.

EXISTING LAW:

1) Establishes the CCC in the Natural Resources Agency and requires the CCC to implement and administer the conservation corps program. (Pub. Resources Code, § 14001.)

2) Directs CCC program activities, including the management of environmentally important lands and water, public works projects, facilitating public use of resources, assistance in emergency operations, assistance in fire prevention and suppression, energy conservation, and environmental restoration. (Pub. Resources Code, § 14300.)

3) Provides that fire prevention, fire suppression, and disaster relief are a major emphasis of the CCC program. (Pub. Resources Code, § 14307.)

4) Establishes the Forestry Corp Program and specifies the following program objectives:

   a) Develop and implement forest health projects, as specified;

   b) Establish forestry corps crews, as specified;

   c) Provide assistance to corps members to obtain forestry and forest technician degrees and certificates;

   d) Train corps members to operate forestry equipment; and,

   e) Create pathways from the corps to degree programs and jobs. (Pub. Resources Code, §§ 14410 & 14411.)

5) Authorizes the CCC Director to pursue partnerships with community colleges, trade associations, forest and timber industries, vocational education institutions, and apprenticeship programs to provide training and experience to corps members. (Pub. Resources Code, § 14411.)

6) Authorizes the CCC Director to establish the Education and Employment Reentry Program within the corps. (Pub. Resources Code, § 14415.1.)

7) Authorizes the CCC Director to enroll formerly incarcerated individuals who successfully served on a CCC program crew and were recommended for participation as a program member by the CalFire Director and the Secretary of CDCR. (Pub. Resources Code, § 14415.1.)

8) Requires the CCC Education and Employment Reentry Program to accomplish all of the following objectives:

a) Develop, partner with, and create opportunities for the forestry corps program objectives, as specified;

b) Collaborate with EDD to provide access to workforce services;

c) Collaborate with nongovernmental organizations dedicated to providing access to counseling, mentorship, supportive housing, health care, and educational opportunities; and,

d) Employ collaborations and partnerships available to the corps consistent with this division. (Pub. Resources Code, § 14415.4, subds. (a)-(d).)

9) Requires the CCC to submit an annual report to the Legislature of specified education and employment outcomes of corps members following their participation in the CCC. (Pub. Resources Code, § 14424.)

10) Establishes CalFire to oversee and administer programs related to forest health and fire prevention and response. (Pub. Resources Code, § 701 et seq.)

11) Establishes the CCC program to provide for training and use of incarcerated persons assigned to conservation camps to perform public conservation projects including, but not limited to, forest fire prevention and control, forest and watershed management and revegetation, recreation, fish and game management, and soil conservation. (Pub. Resources Code, § 4951.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This legislation would create a center to train formerly incarcerated people in forestry management, thereby reducing the risk of deadly wildfires, while offering these qualified individuals a pathway to gainful employment. One way to reduce the devastation of wildfires is to proactively engage in forestry and vegetation management, including brush clearing. The greatest obstacle to this practice, however, is a lack of a trained workforce. This bill seeks to fill that void by establishing a program where graduates would be eligible for an entry-level forestry positions throughout the state."

2) **SB 804 (Glazer) – Governor's Veto:** SB 804 of this Legislative Session would have required the CCC, in partnership with CalFire and CDCR, to establish a forestry training center in Northern California and required that formerly incarcerated individuals be enrolled. The text of SB 804 is nearly identical to the language of this bill. Governor Newsom vetoed SB 804 stating:

> I am returning Senate Bill 804 without my signature.
>
> This bill would direct the California Conservation Corps (CCC) to establish a forestry training center providing training in Northern California for entry-level forestry and vegetation management jobs and prioritizing the enrollment of former conservation camp

crew members, in consultation with the Department of Forestry and Fire Protection (CAL FIRE) and the Department of Corrections and Rehabilitation (CDCR).

As California continues to face unprecedented fire seasons, California has worked to expand our firefighting force. In 2020, I was proud to sign AB 2147 (Chapter 60, Statutes of 2020), which allowed for incarcerated individuals to serve as firefighters following their release. Additionally, in October 2018, CDCR, in partnership with CAL FIRE and the CCC, began a Firefighter Training and Certification Camp in Ventura County. The pilot program was established to expand employment opportunities for incarcerated individuals with the intention of preparing them for entry-level firefighting jobs following release.

I applaud the efforts laid out in this bill and encourage the author to work through the budget process to advance efforts related to the expansion of a Northern California center.

The Governor's veto message reflects an agreement reached via the budget process last year to consider approving the center through the 2022-2023 state budget. This commitment is documented in the Assembly Budget Committee's analysis packet for AB 170/SB 170 in the following Supplemental Reporting Language:

Forestry Management Training Center. Includes SRL as follows: The Legislative Analyst's Office shall consult with CalFire and other appropriate stakeholders, including the California Conservation Corps, to develop options for the Legislature to consider for creating a forestry management training center in Northern California. It is the intent of the Legislature to consider approving the center during the budget process for the 2022-23 state budget.

(<**https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Analyses%20Packet%20%20%2009.07.21%20%20updated.pdf**>, p. 28)

The subsequent LAO report explored the intended goals of a new training center. (Legislative Analyst's Office, *Options for a Forestry Management Training Center in Northern California* (available at <**https://lao.ca.gov/reports/2022/4487/forestry-mgmt-010422.pdf**>.) The author has indicated that the primary goal of the establishment of the training center is to reduce recidivism through a reentry program that provides formerly incarcerated people with meaningful job training. The remainder of the report posed several questions about the design, funding, and operation of the center. The report concluded with a discussion of alternatives to the creation of a new training center, including expanding existing programs such as the VTC. Detailed responses from the author regarding questions raised in the report pertaining to the design, funding, and operation of the center are outlined in the analysis prepared by the Senate Committee on Natural Resources and Water for the Committee's March 8, 2022 hearing.

The author's office has informed this committee that it made a request to fund the center through the 2022-2023 budget, but that the budget bill does not currently provide for such funding. (See SB 154 (Skinner), Budget Act of 2022.)

3) **California Conservation Corps:** The CCC, established in 1976, is the oldest and largest state conservation corps program in the country. The CCC provides California residents between 18- and 25-years-old with a year of paid service to the state. Since 1976, the CCC has provided more than 74 million hours of natural resource work, such as trail restoration, tree planting, habitat restoration, and more than 11.3 million hour of work on emergency response – fires, floods, and earthquakes.

   Although originally conceived as a labor source for trail maintenance and restoration, the CCC has since evolved into a workforce development program. Today, corps members develop skills in forestry management, energy auditing and installation, emergency services management, and firefighting. Many corps members receive their high school diplomas and industry certifications at the conclusion of their service. **(https://ccc.ca.gov/who-we-are/about/)**

   The CCC is designed as a one-year program, with the possibility of extension to up to three years, depending on the performance of the member. Approximately 3,000 corps members enroll each year, with an average stay of roughly nine months. More than 120,000 young men and women have participated in the CCC over the last 40 years. Currently, there are more than 1,623 corps member positions available at 26 centers statewide, and there nine residential centers with 600 beds for assigned corps members.

   AB 864 (McCarty), Chapter 659, Statutes of 2017, authorized the CCC Director to accept applicants who are on probation, post release community supervision, or mandatory supervision. The applicant's probation officer has to consent to the placement of the applicant into the corps. CCC works with the probation officers on a case-by-case basis to evaluate the applicant's acceptance to the program. These applicants make up less than 1% of the total active corps membership.

   AB 278 (McCarty), Chapter 571, Statutes of 2019, expanded the CCC Director's authority to consider criminal justice system involved individuals for CCC placement with the authority to accept applicants who are on parole.

4) **CCC Involvement with CalFire.** The CCC has worked on fuel reduction for much of the last four decades. In 2011, the CCC established a formal partnership with CalFire to work on fire prevention activities in the State Responsibility Area, including controlled burns, vegetation removal, fuel break creation, and erosion control. Partnership activities have covered three thousand acres to date. The CCC works with local fire safe councils, county agencies and utilities on fuel reduction projects. The CCC has also worked with CalFire and the U.S. Forest Service (USFS) to remove hazardous dead trees as part of the Tree Mortality Task Force program. AB 2126 (Eggman), Chapter 635, Statutes of 2018, established the Forestry Corps Program within CCC dedicated specifically to forestry training.

   In addition to the fire prevention activities detailed above, the CCC partners with CalFire to provide Type II fire crews, which are trained using USFS guidelines to provide initial attack and fire line construction. "Initial attack" is defined as the actions taken by first responders to protect lives and property, prevent further extension of the fire, and fire line construction that removes fuels adjacent to active fires to reduce the chance of spread. CCC crews also provide logistics support for Type I fire crews on the frontlines of active fires.

5) **Conservation Camp Program:** CDCR, in cooperation with CalFire and the Los Angeles County Fire Department, jointly operates 35 conservation camps – commonly referred to as fire camps – located in 25 counties. The primary mission of the Conservation Camp Program is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters. All camps are minimum-security facilities and staffed with correctional staff. As of May 2021, approximately 1,600 incarcerated individuals work at fire camps, and approximately 900 are fire-line qualified.

   Incarcerated individuals receive Forestry Firefighter Training via classroom and field exercises taught by CalFire instructors. All inmates receive the same entry-level training as CalFire's seasonal firefighters, in addition to ongoing training from CalFire throughout the time they are in the program. An incarcerated individual must volunteer for the fire camp program; no individual is involuntarily assigned to work in a fire camp. Volunteers must have "minimum custody" status, or the lowest classification for incarcerated individuals based on their sustained good behavior in prison, their conforming to rules within the prison, and their participation in rehabilitative programming. Some offenses automatically make an individual ineligible for conservation camp assignment, even if they have minimum custody status. Those convictions include sexual offenses, arson, and any history of escape with force or violence. (https://www.cdcr.ca.gov/conservation-camps/)

6) **Ventura Training Center:** CalFire, CCC, and CDCR created a firefighter training and certification program at the Ventura Training Center (VTC) in Camarillo. Trainees are people on parole who participated in the Conservation Camp Program. VTC provides firefighter training, certifications, and job readiness support to create a pathway for formerly incarcerated individuals to compete for entry-level firefighting jobs with state, federal and local agencies. VTC participants are trained and available to assist in fire suppression, emergency incident response, and to perform fire prevention and resource management work. Onsite counselors help participants to develop skills to successfully reintegrate into the community. (https://www.cdcr.ca.gov/facility-locator/conservation-camps/#CCPF)

   The CCC is the employer of record and provides base wages and benefits consistent with other corps members. CalFire is responsible for the administration of the facility, fire training, and certification. CDCR and CalFire jointly select participants for the program, and CalFire recommends individuals that are housed at fire camps while incarcerated. (Office of the Governor, *2018-19 State Budget*, available at http://www.ebudget.ca.gov/2018-19/pdf/Enacted/BudgetSummary/PublicSafety.pdf.)

   Unlike the VTC, the goal of which is prepare formerly incarcerated persons for an entry-level firefighter position, the objective of the training center in Northern California would be to provide enhanced training, education, work experience, and job readiness for entry-level forestry and vegetation management jobs.

7) **Education and Employment Reentry Program:** Further, AB 1668 (Carrillo), Chapter 587, Statutes 2019, authorized the Director of CCC to establish the Education and Employment Reentry Program to enroll formerly incarcerated individuals who successfully served on a CCC program crew and were recommended for participation as a program member by the Director of CalFire and the Secretary of CDCR. (Pen. Code, § 14415.1, subd. (a).) Program participants are required to, among other things, participate in natural resources or land management projects, fuels reduction and vegetation management projects, and to assist in

fire prevention and assisting in disaster operations. (Pen. Code, § 14415.3, subds. (a), (b), & (e).) The goal of the program is to develop, partner with, and create opportunities for specified forestry corps program objectives; to provide access to workforce services; and to collaborate with nongovernmental organizations dedicated to providing access to counseling, mentorship, supportive housing, health care, and educational opportunities. (Pen. Code, § 14415.3, subds. (a)-(c).)

Like the proposed training center, implementation of the Education and Employment Reentry Program is subject to an appropriation by the Legislature. Because there has been no such appropriation, the reentry program is not yet operational. Without funding through the 2022-2023 budget, the proposed training center in Norther California would not become operational either.

8) **Argument in Support**: According to the *Association of California Water Agencies*, "SB 936 would establish a forestry-training center in northern California to provide enhanced training and job readiness for entry-level forestry and vegetation management jobs to formally incarcerated individuals. Investing in resources to support forest management and wildfire fuel reduction practices is vital to combating wildfires in California. Healthy forests aid in achieving a reliable supply of high quality water, which is fundamental to securing drinking water for all Californians, maintaining agriculture productivity, supporting a vibrant and diverse economy, and sustaining watershed ecosystems.

"In 2021, the Legislature passed SB 804 (Glazer), which would have established a forestry-training center in northern California for former inmates that participated in the conservation camp system. This bill was vetoed by the Governor who encouraged Senator Glazer to pursue funding for such a program through the budget process. SB 936 is a reintroduction of SB 804, introduced this year to parallel the budget process. The Senate and Assembly unveiled a joint proposed budget, although the details on climate funding are to be determined through forthcoming negotiations with the Administration. Senator Glazer has identified this as one of his priorities in the budget process this year and will seek a budget augmentation to accompany this bill.

"SB 936 would create a trained workforce to combat wildfires in California through forest management resulting in benefits to headwaters. ACWA supports SB 936 and respectfully requests your "AYE" vote when the bill is heard in the Assembly Public Safety Committee."

9) **Related Legislation**: AB 1908 (Maienschein), would have allowed an incarcerated individual who successfully participated in and completed training, as specified, to be an incarcerated individual hand crewmember to be eligible for a firefighter certificate provided by CCC. AB 1908 did not receive a hearing in this committee at the request of the author.

10) **Prior Legislation**:

a) SB 804 (Glazer), of the 2021-2022 Legislative Session, was nearly identical to this bill. The Governor vetoed SB 804.

b) AB 642 (Friedman) Chapter 375, Statutes of 2021, requires the State Fire Marshal, by July 1, 2023, to develop a proposal to establish a prescribed fire training center.

c) AB 2147 (Reyes), Chapter 60, Statutes of 2020, allows formerly incarcerated individuals who have successfully participated in the California Conservation Camp Program, or similar county programs, to petition for dismissal of their conviction, opening up pathways for employment.

d) SB 94 (Committee on Budget and Fiscal Review), Chapter 25, Statutes of 2019, directed the Division of Juvenile Justice, until July 1, 2020, in partnership with the CCC and participating certified local conservation corps, to develop and establish a pre-corps transitional training program to approximate the experience of serving in a conservation corps.

e) AB 278 (McCarty), Chapter 571, Statutes of 2019), authorizes the CCC Director to enroll a person on parole in the corps.

f) AB 1668 (Carrillo), Chapter 587, Statutes of 2019, requires the CCC to establish the Education and Employment Reentry Program (EERP) to employ formerly incarcerated individuals who served on a Conservation Camp program and were recommended for participation by the CalFire director and the CDCR secretary.

g) AB 2126 (Eggman), Chapter 635, Statutes of 2018, requires the CCC director to establish a Forestry Corps Program by July 1, 2019, as specified.

h) AB 864 (McCarty), Chapter 659, Statutes of 2017, authorizes the CCC Director, in recruiting and enrolling corps members and special corps members, to select applicants who are on probation, post release community supervision, or mandatory supervision.

REGISTERED SUPPORT / OPPOSITION:

Support

Allweather Wood, LLC
Anti-recidivism Coalition
Association of California Water Agencies (ACWA)
California Municipal Utilities Association
California Public Defenders Association
California Workforce Association
East Bay Municipal Utility District
Ella Baker Center for Human Rights
Humboldt Redwood Company LLC
Humboldt Sawmill Company
Initiate Justice
Mendocino Forest Products
Mendocino Redwood Company
Rubicon Programs

Opposition

None

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

Date of Hearing: June 28, 2022
Counsel: Cheryl Anderson

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

SB 1468 (Glazer) – As Amended May 19, 2022

As Proposed to be Amended in Committee

SUMMARY: Provides non-monetary relief in the form of updating criminal history records and issuing a "certificate of innocence" to people who have been found factually innocent by a court or the California Victim Compensation Board (CalVCB). Specifically, **this bill**:

1) Provides that if the evidence shows that the charged offense was either not committed at all, or, if committed, was not committed by the claimant of wrongful conviction compensation, or if a writ of habeas corpus or motion to vacate has been granted and the Attorney General (AG) has not proved by clear and convincing evidence that the claimant committed the acts constituting the offense, the claimant is entitled to the following nonmonetary relief:

    a) The Department of Justice (DOJ) shall, within two weeks, do all the following:

        i) Issue the claimant a "certificate of innocence" on DOJ letterhead, signed by or on behalf of the AG, stating the claimant's name, the charge that resulted in the former conviction, the fact and date of the former conviction, the number of days incarcerated solely as a result of the former conviction, the number of days, if any, that the individual was on parole, community supervision, or was required to register as a sex offender solely as a result of the former conviction, and that the claimant has been found by the State of California to be "factually innocent" of the crime underlying the former conviction and has thereby been exonerated;

        ii) Annotate the claimant's state summary criminal history information to state that the claimant has been found by the State of California to be "innocent" of the crime underlying the former conviction; and,

        iii) Request that any local, state, or federal agency or entity to which the DOJ has provided criminal offender record information regarding the claimant annotate its records accordingly. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly;

    b) The law enforcement agency that has jurisdiction over the offense underlying the conviction at issue shall, within two weeks, do both of the following:

        i) Annotate any local summary criminal history information for the claimant to state, directly next to or below the entry or entries regarding the former conviction, that the claimant has been found by the CalVCB or by a court to be "innocent" of the crime underlying the former conviction;

ii) Request that any local, state, or federal agency or entity to which the law enforcement agency has provided criminal offender record information regarding the claimant annotate its records accordingly. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly; and,

c) Require the certificate of innocence and annotations updating criminal history records to state whether the finding of factual innocence was made by a court or the CalVCB and the authority for the finding of factual innocence.

2) Provides that if the DOJ receives notice that a person has received a finding of "innocence" from the court or CalVCB, it shall send notice of that fact to all officers and agencies it had previously notified of the arrest or other proceedings against the person.

3) States that where a habeas corpus or motion to vacate has been granted by a court with no finding of factual innocence, and the charges were subsequently dismissed or there was an acquittal on retrial, CalVCB shall, in addition to recommending compensation, find that the offense was either not committed or not committed by the claimant, unless the Attorney General (AG) shows by clear and convincing evidence that the claimant committed the offense.

4) Provides that in other instances where there is no court finding of factual innocence, CalVCB shall, in addition to recommending compensation, find that the offenses were not committed by the claimant, unless the AG shows by clear and convincing evidence that the claimant committed the offense.

5) Provides that when a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was "factually innocent," the court shall issue an order entitling the defendant to nonmonetary relief, as provided above, and specifying the number of days the defendant was incarcerated, the number of days they were on parole or community supervision, and also the number of days required to register as a sex offender.

6) Makes the nonmonetary relief retroactive.

7) States that a finding of "innocence" shall be included in the criminal record information.

8) Provides that when a court orders a finding of "innocence," the court shall report the proceeding and the finding to the DOJ.

9) Removes the requirement that a person have sustained injury through their erroneous conviction and imprisonment, in order for CalVCB to recommend wrongful conviction compensation.

EXISTING LAW:

1) States that whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case. (Pen. Code, § 851.86.)

2) Requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims to CalVCB. (Pen. Code, § 851.86.)

3) States that if a person has secured a declaration of factual innocence from the court, the finding shall be sufficient grounds for compensation by CalVCB. Upon application, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation be made. (Penal Code § 851.865.)

4) States that if the court has granted a writ of habeas corpus or when the court vacates a judgement, and if the court has found that the person is factually innocent, that the finding shall be binding on CalVCB, and upon application by the person, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, § 1485.55, subd. (a).)

5) Authorizes, if the court has granted a writ of habeas corpus or vacated a judgment, a person to move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner. (Pen. Code, § 1485.55, subd. (b).)

6) States that if the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid. (Pen. Code, § 1485.55, subd. (c).)

7) Provides that after a writ of habeas or a motion to vacate was granted and the charges are subsequently dismissed, or the person was acquitted of the charges, CalVCB, shall upon application by the person, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid, unless the AG establishes, by clear and convincing evidence, that the person is not entitled to compensation. (Pen. Code, § 4900, subd. (b).)

8) Provides that in cases where a person was acquitted or the charges were dismissed after a habeas petition or motion to vacate a judgement was granted, the AG has 45 days to object to a wrongful conviction compensation claim and may request a single 45 day extension upon a showing of good cause. (Pen. Code, § 4902, subd. (d).)

9) Specifies that at the hearing, the AG bears the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. (Pen. Code, § 4902, subd. (d).)

10) Requires CalVCB to recommend to the Legislature payment of the compensation sum, if the AG fails to meet this burden. (Pen. Code, § 4902, subd. (d).)

11) Provides that the AG has 60 days to respond to any other claim for which the person was not declared factually innocent by the court. The AG may request an extension of time, upon a showing of good cause. CalVCB shall set a hearing of the claim, and make a recommendation to the Legislature based on the evidence presented by the claimant. (Pen. Code, § 4902, subds. (a)-(c).)

12) Provides that if the district attorney or the AG stipulates to or does not contest the factual allegations underlying one or more grounds for granting a writ of habeas corpus or a motion to vacate a judgement, the facts underlying the basis for the court's ruling shall be binding on the AG, the factfinder, and CalVCB. (Pen. Code, § 1485.5, subd. (a).)

13) States that the express factual findings made by the court in considering a petition for habeas corpus, a motion to vacate judgment, or an application for a certificate of factual innocence, shall be binding on the AG, the factfinder, and CalVCB. (Pen. Code, § 1485.5, subd. (c).)

14) Provides that when the evidence shows that the crime was either not committed at all, or, if committed, was not committed by the claimant, or for claims where the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, and CalVCB has found that the claimant has sustained injury through their erroneous conviction and imprisonment, it shall report the facts of the case and its conclusions to the Legislature and recommend an appropriation of $140 per day of incarceration. (Pen. Code, § 4904.)

15) Specifies what shall be included in a person's criminal record information. (Pen. Code, § 13102.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Wrongfully convicted individuals face many barriers to rebuilding their lives following a finding of factual innocence.

   "For example, when they apply for jobs or housing, prospective employers and landlords will learn about their conviction and incarceration by reviewing commercial background checks, online research, or their employment or rental histories. But those sources typically do not include subsequent exonerations or findings by the state of factual innocence.

   "As a result, prospective employers or landlords have no reason to believe that applicants were exonerated and found innocent, and the individuals have no simple way to prove otherwise.

   "SB 1468 would provide individual is found to have been factually innocent of a crime they were convicted of a 'Certificate of Innocence' that they can provide to their employers or landlord.

   "By reducing these additional challenges and moving towards a mindset of prevention and rehabilitation, these individuals will be able re-enter society with more ease.

   "This bill will help lower recidivism levels and create a path for those who were found innocence to reintegrate into society."

2) **Court Finding of Factual Innocence:** "Factual innocence" is a finding of legal innocence. While the person still could have committed the offense, to obtain a finding of factual innocence from a court, a person must overcome some fairly high burdens.

There are various ways a person could be determined to be "factually innocent" by a court. For example, a person may petition the trial court for a determination of "factual innocence." The evidence must show "facts exist which would lead no person of ordinary care and prudence to believe or conscientiously entertain an honest and strong suspicion that the person arrested [or acquitted] is guilty…." (Pen. Code, § 851.8, subd. (e); *People v. Adair* (2003) 29 Cal.4th 895, 907.) A defendant acquitted after trial may also petition the court for a determination of factual innocence. (*Ibid.*) Also, a court may grant a writ of habeas corpus or vacate a judgment, and in doing so find that the person is factually innocent, under a standard for factual innocence applicable in those proceedings. (See e.g., *Souliotes v. California Victim Comp. Bd.* (2021) 61 Cal.App.5th 73.)

On the other hand, if the trial court has granted a habeas corpus petition or motion to vacate a conviction without such a finding, the person can obtain a finding of "factual innocence" by demonstrating to the court by a preponderance of the evidence that the crime they were charged with was either not committed or not committed by them. (Pen. Code, § 1485.55, subd. (b).) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." (*People v. Esparza* (2015) 242 Cal.App.4th 726, 195 [citations and quotations omitted].)

This bill would entitle a person who obtains a finding of factual innocence from a court, to receive a "certificate of innocence" and have their criminal history information updated to reflect a finding "innocence." Under current law, upon motion, they are entitled to an order to have their records sealed and wrongful conviction compensation through CalVCB and the Legislature. (See e.g., Pen. Code, 851.86.)

3) **Wrongful Conviction Compensation Claims**: CalVCB processes claims from persons seeking compensation for wrongful convictions. (Pen. Code, §§ 4900- 4906.) A successful claim results in a recommendation to the Legislature for compensation in the amount of $140 per day of the claimant's wrongful imprisonment. (Pen. Code, § 4904.) CalVCB's wrongful conviction compensation process differs based on the circumstances of the claim.

If a person has secured a declaration of factual innocence from the court, or if the court has found that the person is factually innocent in a proceeding on a writ of habeas corpus or motion to vacate a judgment, the finding is sufficient grounds for payment of compensation for a claim. (Pen. Code, §§ 851.865 & 1485.55.) Upon application, CalVCB is required to, within 30 days, and without a hearing, recommend to the Legislature that an appropriation be made and the claim be paid. (Pen. Code, §§ 851.865 & 4902, subd. (a).)

If the court has granted a writ of habeas corpus or vacated a judgment without a finding of factual innocence, a person may move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by them. (Pen. Code, § 1485.55, subd. (b).) If the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence, CalVCB must, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid. (Pen. Code, § 1485.55, subd. (c).)

In cases where a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate, and the charges were subsequently dismissed, or the person

was acquitted of the charges on a retrial, CalVCB is required, upon application, and without a hearing, to recommend to the Legislature that an appropriation be made and the claim be paid, unless the AG establishes, by clear and convincing evidence, that the person committed the acts constituting the offense. (Pen. Code, § 4900, subd. (b).) If the AG's office does not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, and CalVCB has found that the claimant has sustained injury through their erroneous conviction and imprisonment, CalVCB is required report the facts of the case and its conclusions to the Legislature, with a recommendation that an appropriation be made and the claim be paid. (Pen. Code, §§ 4904 & 4902, subd. (d).)

For all other claims, the AG has 60 days to respond to the claim or request an extension of time, upon a showing of good cause. (Pen. Code, § 4902, subd. (a).) Upon receipt of a response from the AG, CalVCB is required to set a hearing on the claim. (Pen. Code, § 4902, subd. (b).) The claimant is required to introduce evidence in support of the claim, proving that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant. (Pen. Code, § 4903, subd. (a).) If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and CalVCB has found that the claimant has sustained injury through their erroneous conviction and imprisonment, CalVCB is required to report the facts of the case and its conclusions to the Legislature, with a recommendation with a recommendation that an appropriation be made and the claim be paid. (Pen. Code, § 4904.)

This bill would entitle a person who receives wrongful conviction compensation, whether or not a court of law made a finding of "factual innocence," to receive a "certificate of innocence" and have their criminal history information updated to reflect a finding "innocence." The proposed committee amendments would require the "certificate of innocence" and updated criminal history information to reflect whether the finding of innocence was made by a court or CalVCB and the authority under which the finding was made.

Absent a court finding of factual innocence, this bill would not seem to entitle a defendant, upon motion, to an order that their records be sealed under Penal Code section 851.86, as that provision contemplates the presence of a judge and proceedings in court.

4) **Separation of Powers Doctrine**: This bill would authorize CalVCB to make "findings of innocence," to be reflected on criminal history records (e.g., the DOJ RAP sheet) as a finding of innocence. Adjudging guilt is a legal question and traditionally a matter for the criminal courts to determine. Delegating this to CalVCB, a civil board, could possibly implicate the separation of powers doctrine which forbids legislative or executive usurpation of traditional judicial authority. (*People v. Navarro* (1972) 7 Cal.3d 248, 258-259; *Mandel v. Myers* (1981) 29 Cal.3d 531, 547.)

Notably, however, the court records would not be required to be updated to reflect CalVCB's finding of innocence. That being said, the court records would still reflect a finding of guilt, while criminal history records (which should accurately reflect a person's criminal history), would reflect the person's innocence. At best, this would create confusion for anyone relying on criminal record information, including a defendant. As a practical matter, the committee amendments require the criminal records to reflect whether the finding was made by the

court or CalVCB, as well as the authority under which relief was granted. This is generally how post-conviction relief is reflected on criminal history record updates. Moreover, in an abundance of caution, by clarifying who made the finding of factual innocence and the authority for the finding – e.g., CalVCB for the purposes of awarding wrongful conviction compensation – there will be less concern that CalVCB is usurping any role of the criminal court.

5) **Background -- Writ of Habeas Corpus**: Habeas corpus, also known as "the Great Writ," is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ are set forth in Penal Code section 1473, subdivision (a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Penal Code section 1473, subdivision (d) specifies that "[t]his section does not limit the grounds for which a writ of habeas corpus may be prosecuted...." A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

   a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;

   b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; and,

   c) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Pen. Code, § 1473, subd. (b).)

6) **Background – Motion to Vacate the Judgment:** After having been released from imprisonment or other restraint, the writ of habeas corpus is no longer available to challenge a conviction. However, other means are available to challenge the conviction. This includes a motion to vacate the judgment of conviction. Such motions may be pursued, for example, when new evidence is discovered that tends to prove the defendant is innocent, and when it is discovered that false or fabricated evidence was used in trial and it was probative and substantial in proving the defendant's guilt. (See Pen. Code, §§ 1473.6 and 1473.7, subd. (a)(2).)

7) **Practical Considerations**: As a practical matter, while the bill would require DOJ to update their records to reflect the CalVCB finding of innocence, there is no provision in the bill that would require CalVCB to notify the DOJ of their finding. Under the bill, only a court making a factual finding would be required to notify the DOJ.

   Where the court makes the finding of factual innocence, the bill would require it to issue an order entitling the defendant to the nonmonetary relief, and specifying the number of days that the defendant was incarcerated, including in pretrial detention, solely as a result of the former conviction, the number of days that the individual was on parole or community supervision solely as a result of the former conviction, and also the number of days the

defendant was required to register as a sex offender solely as a result of the former conviction. Is the burden to provide this information best placed on the court?

8) **Argument in Support**: According to *After Innocence*, a co-sponsor of the bill, "Wrongfully convicted individuals face many barriers to rebuilding their lives following a finding of factual innocence. For example, when they apply for jobs or housing, they typically find that prospective employers and landlords will learn about their conviction and incarceration by reviewing commercial background checks, online research, or their employment or rental histories. But those sources typically do not include subsequent exonerations or findings by the state of factual innocence. As a result, prospective employers or landlords have no reason to believe that applicants were exonerated and found innocent, and the individuals have no simple way to prove otherwise.

"A 2020 study revealed that exonerated individuals may experience employment discrimination similar to an offender who is found guilty of the same crime. A similar study suggested that the presence of a [criminal] record may lead to difficulty in finding and securing employment and can be associated with higher levels of offending after exoneration. By reducing these additional challenges and moving towards a mindset of prevention and rehabilitation, these individuals are able re-enter society with more ease. This inherently contributes to lowering recidivism levels and creates overall better outcomes for the community.

"Exonerees have suffered unimaginable hardship as a result of their wrongful convictions – often years in prison, and the subsequent disturbances that ensue when removed from their lives, communities, and loved ones. Providing them with the appropriate documentation and materials to prove their innocence upon re-entry into society is a small relief for individuals who are working hard to piece their lives back together." (Footnotes omitted.)

9) **Related Legislation**: SB 981 (Glazer) would allow a person to move for a finding that they are entitled to wrongful conviction compensation, if the court has granted a writ of habeas corpus or vacated a judgment, and the charges against the person have been dismissed or the person has been acquitted on retrial. SB 981 is pending in the Assembly Appropriations Committee.

10) **Prior Legislation**:

a) SB 446 (Glazer), Chapter 449, Statutes of 2021, shifted the burden onto the state to prove, for the purposes of a wrongful compensation claim with the CalVCB, that the claimant is not entitled to compensation where their charges were dismissed or they were acquitted on retrial following the granting of a petition for writ of habeas corpus or motion to vacate the judgment.

b) SB 1137 (Monning), of the 2019-2020 Legislative Session, would have made a finding of factual innocence at an uncontested hearing binding on the CalVCB for purposes of a wrongful conviction compensation claim, and would have required the CalVCB to order compensation if a claimant established by a preponderance of the evidence that no reasonable jury would find them guilty beyond a reasonable doubt based on the evidence presented to CalVCB. SB 1137 was not heard in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

After Innocence (Co-Sponsor)
California Attorneys for Criminal Justice
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for the Innocent
California Public Defenders Association
Californians for Safety and Justice
Dbsa California
Ella Baker Center for Human Rights

Opposition

None

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

Amended Mock-up for 2021-2022 SB-1468 (Glazer (S))

Mock-up based on Version Number 97 - Amended Senate 5/19/22
Submitted by: Cheryl Anderson, Assembly Public Safety

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

SECTION 1. Section 851.86 of the Penal Code is amended to read:

851.86. Whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall inform the defendant of the availability of indemnity for persons erroneously convicted pursuant to Chapter 5 (commencing with Section 4900) of Title 6 of Part 3, and the time limitations for presenting those claims. The court shall also issue both of the following orders:

(a) An order entitling the defendant to the nonmonetary relief available pursuant to Section 4904, and specifying the number of days that the defendant was incarcerated, including in pretrial detention, solely as a result of the former conviction, the number of days that the individual was on parole or community supervision solely as a result of the former conviction, and also the number of days the defendant was required to register as a sex offender solely as a result of the former conviction. Any person granted relief under this section prior to January 1, 2023, may bring a motion for the relief available under this subdivision, and to the nonmonetary relief available pursuant to Section 4904.

(b) Upon written or oral motion of any party in the case or the court, and with notice to all parties to the case, an order that the records in the case be sealed, including any record of arrest or detention. If such an order is made, the court shall give the defendant a copy of that order and inform the defendant that they may thereafter state they were not arrested for that charge and that they were not convicted of that charge, and that they were found innocent of that charge by the court.

SEC. 2. Section 1485.55 of the Penal Code is amended to read:

1485.55. (a) In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that the person is factually innocent, under any standard for factual innocence applicable in those proceedings, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the person, the person shall be provided with the nonmonetary relief available pursuant to Section 4904 and the board shall, without a

hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904. Any person granted relief under this subdivision prior to January 1, 2023, is entitled, upon application to the board, to the nonmonetary relief available pursuant to Section 4904.

(b) In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, the person may move for a finding of factual innocence by a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner.

(c) If the court makes a finding that the petitioner has proven their factual innocence by a preponderance of the evidence pursuant to subdivision (b), the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904. Any person granted relief under this subdivision prior to January 1, 2023, is entitled, upon application to the board, to the nonmonetary relief available pursuant to Section 4904.

(d) A presumption does not exist in any other proceeding for failure to make a motion or obtain a favorable ruling pursuant to subdivisions (a) and (b). No res judicata or collateral estoppel finding in any other proceeding shall be made for failure to make a motion or obtain a favorable ruling pursuant to subdivision (a) or (b) of this section.

(e) If a federal court, after granting a writ of habeas corpus, pursuant to a nonstatutory motion or request, finds a petitioner factually innocent by no less than a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant to Section 4904, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904. Any person granted relief under this subdivision prior to January 1, 2023, is entitled, upon application to the board, to the nonmonetary relief available pursuant to Section 4904.

(f) For the purposes of this section, unless otherwise stated, "court" is defined as a state or federal court.

SEC. 3. Section 4900 of the Penal Code is amended to read:

4900. (a) Any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, shall have served the term or any part thereof for which they were imprisoned in state prison or incarcerated in county jail, may, under the conditions provided under

this chapter, present a claim against the state to the California Victim Compensation Board for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration.

(b) If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, find that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904, unless the Attorney General establishes pursuant to subdivision (d) of Section 4902, that the claimant is not entitled to compensation.

SEC. 4. Section 4902 of the Penal Code is amended to read:

4902. (a) If the provisions of Section 851.865 or 1485.55 apply in any claim, the California Victim Compensation Board shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant pursuant to Section 4904 and recommend to the Legislature payment of that sum, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904. As to any claim to which Section 851.865 or 1485.55 does not apply, the Attorney General shall respond to the claim within 60 days or request an extension of time, upon a showing of good cause.

(b) Upon receipt of a response from the Attorney General, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing. The board shall use reasonable diligence in setting the date for the hearing and shall attempt to set the date for the hearing at the earliest date convenient for the parties and the board.

(c) If the time period for response elapses without a request for extension or a response from the Attorney General pursuant to subdivision (a), the board shall fix a time and place for the hearing of the claim, mail notice thereof to the claimant at least 15 days prior to the time fixed for the hearing, and make a recommendation based on the claimant's verified claim and any evidence presented by the claimant.

(d) If subdivision (b) of Section 4900 applies in any claim, the California Victim Compensation Board shall calculate the compensation for the claimant pursuant to Section 4904 and recommend to the Legislature payment of that sum, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904, unless the Attorney General objects in writing, within 45 days from when the claimant files the claim, with clear and convincing evidence that the claimant is not entitled to compensation. The Attorney General may request a single 45-day extension of time, upon a showing of good cause. If the Attorney General declines to object within the allotted period of time, then the board shall issue its recommendation pursuant to Section 4904 within 60

days thereafter. Upon receipt of the objection, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the fixed time for the hearing. At a hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the Attorney General fails to meet this burden, the board shall find that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, and shall recommend to the Legislature payment of the compensation sum calculated pursuant to Section 4904, and the petitioner shall be provided with the nonmonetary relief available pursuant to Section 4904.

SEC. 5. Section 4903 of the Penal Code is amended to read:

4903. (a) Except as provided in Sections 851.865 and 1485.55, and in subdivision (b) of Section 4900, the board shall fix a time and place for the hearing of the claim. At the hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The claimant shall prove the facts set forth in the statement constituting the claim, including the fact that the crime with which they were charged was either not committed at all, or, if committed, was not committed by the claimant.

(b) For claims falling within subdivision (b) of Section 4900 in which the Attorney General objects to the claim pursuant to subdivision (d) of Section 4902, the board shall fix a time and place for the hearing of the claim. At the hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. The claimant may introduce evidence in support of the claim.

(c) In a hearing before the board, the factual findings and credibility determinations establishing the court's basis for writ of habeas corpus, a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, or an application for a certificate of factual innocence as described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and the board.

(d) A conviction reversed and dismissed is no longer valid, thus the Attorney General may not rely on the fact that the state still maintains that the claimant is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the claimant through court litigation, or that there was a conviction to establish that the claimant is not entitled to compensation. The Attorney General may also not rely solely on the trial record to establish that the claimant is not entitled to compensation.

(e) The board shall deny payment of any claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

(f) A presumption does not exist in any other proceeding if the claim for compensation is denied pursuant to this section. No res judicata or collateral estoppel finding shall be made in any other proceeding if the claim for compensation is denied pursuant to this section.

SEC. 6. Section 4904 of the Penal Code is amended to read:

4904. (a) If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, the claimant shall be entitled to the relief set forth in subdivision (b).

(b) (1) The California Victim Compensation Board shall report the facts of the case and its conclusions to the next Legislature, including the number of days that the claimant was incarcerated solely as a result of the former conviction, and the number of days that the individual was on parole, community supervision, or was required to register as a sex offender solely as a result of the former conviction, with a recommendation that the Legislature make an appropriation for the purpose of indemnifying the claimant for the injury. The amount of the appropriation recommended shall be a sum equivalent to one hundred forty dollars ($140) per day of incarceration served solely as a result of the former conviction, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration. That appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code.

(2) The Department of Justice shall, within two weeks, do all of the following:

(A) Issue to the claimant a certificate of innocence on Department of Justice letterhead, signed by or on behalf of the Attorney General, stating the claimant's name, the charge set forth in the original and any amended accusatory pleading that resulted in the former conviction, the fact and date of the former conviction, the number of days that the claimant was incarcerated solely as a result of the former conviction, as determined by the California Victim Compensation Board or by a court pursuant to Section 851.86, the number of days, if any, that the individual was on parole, community supervision, or was required to register as a sex offender solely as a result of the former conviction, as determined by the California Victim Compensation Board or by a court pursuant to Section 851.86, and that the claimant has been found ~~by the State of California~~ to be factually innocent of the crime underlying the former conviction and has thereby been exonerated. The certificate of innocence shall state whether the finding of innocence was made by a state or federal court or the California Victim Compensation Board and the authority for the finding of innocence.

(B) Annotate the claimant's state summary criminal history information to state, directly next to or below the entry or entries regarding the former conviction that the claimant has been found ~~by the State of California~~ to be innocent of the crime underlying the former ~~conviction.~~ conviction, The annotation shall state whether the finding of innocence was made by a state or federal court or the California Victim Compensation Board and the authority for the finding of innocence.

(C) Request that any local, state, or federal agency or entity to which the Department of Justice has provided criminal offender record information regarding the claimant annotate its records to state that the claimant has been found by the State of California to be innocent of the crime

underlying the former conviction. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly.

(3) The law enforcement agency that has jurisdiction over the offense underlying the conviction at issue shall, within two weeks, do both of the following:

(A) Annotate any local summary criminal history information for the claimant to state, directly next to or below the entry or entries regarding the former conviction, that the claimant has been found ~~by the State of California~~ to be innocent of the crime underlying the former conviction. The annotation shall state whether the finding of innocence was made by a state or federal court or the California Victim Compensation Board and the authority for the finding of innocence.

(B) Request that any local, state, or federal agency or entity to which the law enforcement agency has provided criminal offender record information regarding the claimant annotate its records to state that the claimant has been found ~~by the State of California~~ to be innocent of the crime underlying the former conviction. The annotation shall state whether the finding of innocence was made by a state or federal court or the California Victim Compensation Board and the authority for the finding of innocence. Each state or local agency or entity within the State of California receiving such a request shall annotate its records accordingly.

(4) Any person granted relief pursuant to this section prior to January 1, 2023, is entitled, upon application to the board, to the nonmonetary relief available pursuant to this subdivision.

SEC. 7. Section 11105.55 is added to the Penal Code, to read:

11105.55. If the Department of Justice receives notice that a person has received a finding of innocence from a state or federal court or the California Victim Compensation Board, it shall send notice of that fact to all officers and agencies that it had previously notified of the arrest or other proceedings against the person.

SEC. 8. Section 13102 of the Penal Code is amended to read:

13102. (a) As used in this chapter, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

(b) Criminal offender record information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood to include, where appropriate, such items for each person arrested as the following:

(1) Personal identification.

(2) The fact, date, and arrest charge; whether the individual was subsequently released and, if so, by what authority and upon what terms.

(3) The fact, date, and results of any pretrial proceedings.

(4) The fact, date, and results of any trial or proceeding, including any sentence or penalty.

(5) The fact, date, and results of any direct or collateral review of that trial or proceeding; the period and place of any confinement, including admission, release; and, where appropriate, readmission and rerelease dates.

(6) The fact, date, and results of any release proceedings.

(7) The fact, date, and authority of any act of pardon or clemency.

(8) The fact and date of any formal termination to the criminal justice process as to that charge or conviction.

(9) The fact, date, and results of any proceeding revoking probation or parole.

(10) The fact, date, and authority for any finding of innocence ~~from a~~ and whether the finding was made by a state or federal court or the California Victim Compensation Board.

(c) It shall not include intelligence, analytical, and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

SEC. 9. Section 13151.5 is added to the Penal Code, to read:

13151.5. When a court makes a finding of innocence, including under Section 1485.55, the court shall report the proceedings and the finding of innocence to the Department of Justice.

SEC. 10. 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: June 28, 2022
Counsel: Liah Burnley

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

SB 986 (Umberg) – As Amended May 19, 2022

SUMMARY: Prohibits car dealers and retailers from selling a new or used motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved or etched with the vehicle identification number (VIN), except as specified. Specifically, **this bill**:

1) Prohibits dealers and retail sellers from selling a new or used vehicle equipped with a catalytic converter unless the catalytic converter has been engraved or etched with the VIN of the vehicle to which it is attached.

2) Exempts from the above-prohibition, collectors of motor vehicles and vehicles sold by a licensed automobile dismantler by or through a salvage pool, as specified, or a salvage disposable auction, as defined.

3) Requires the written record maintained by a core recycler who accepts a catalytic converter for recycling to include any unique identification number, VIN, or any other identifying information etched or engraved on the catalytic converter.

4) Provides that a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers shall retain information on the sale that includes a description of the catalytic converters including any unique identification number, the VIN, or any other identifying information etched or engraved on the catalytic converter.

5) States that the existing requirements for payments made by a core recycler for a catalytic converter do not apply if the core recycler has a written agreement with the seller for the transaction that includes a log or other regularly updated record that describes each individual catalytic converter with sufficient particularity, including any identification numbers or markings.

6) Requires core recyclers who hold a written agreement with a business that sells catalytic converters for recycling purposes to collect a description of the catalytic converters, including any unique identification number, the VIN, or any other identifying information etched or engraved on the catalytic converter.

7) Changes the form of acceptable payments that core recyclers can receive for a catalytic converter from a check to any traceable form of payment.

EXISTING STATE LAW:

1) Defines a "core recycler" as a person or business that buys used individual catalytic converters or other parts previously removed from a vehicle, and specifies that a person or

business that buys a vehicle that contains these parts is not a core recycler. (Bus. & Prof. Code, § 21610, subd. (a).)

2) Requires a core recycler who accepts a catalytic converter for recycling to maintain a written record that contains all of the following:

   a) The place and date of each sale or purchase of a catalytic converter made in the conduct of his or her business as a core recycler;

   b) The name, valid driver's license number, and state of issue, or California-issued identification number, of the seller of the catalytic converter and the vehicle license number, including state of issue of a motor vehicle used in transporting the catalytic converter to the core recycler's place of business. If the seller is a business, the written record shall include the name, address, and telephone number of the business;

   c) A description of the catalytic converters purchased or sold, including the item type and quantity, amount paid for the catalytic converter, and identification number, if any, and the vehicle identification number; and,

   d) A statement indicating either that the seller of the catalytic converter is the owner of the catalytic converter, or the name of the person from whom he or she has obtained the catalytic converter, including the business, if applicable, as shown on a signed transfer document. (Bus. & Prof. Code, § 21610, subd. (b).)

3) States that a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers shall retain information on the sale that includes all of the following:

   a) The name and address of each person to whom the catalytic converter is sold or disposed;

   b) The quantity of catalytic converters being sold or shipped;

   c) The amount that was paid for the catalytic converters sold in the transaction; and,

   d) The date of the transaction. (Bus. & Prof. Code, § 21610, subd. (c).)

4) States that a core recycler shall not pay for a catalytic converter unless specified requirements are met at the time of sale, including that the core recycler obtains a clear photograph or video of the seller, a copy of the valid driver's license of the seller or federal government issued identification card containing a photograph and an address of the seller, a clear photograph or video of the catalytic converter being sold, and a written statement from the seller indicating how the seller obtained the catalytic converter. (Bus. & Prof. Code, § 21610, subd. (d).)

5) Requires a core recycler to keep and maintain the information for not less than two years and to make that information available for inspection by local law enforcement upon demand. (Bus. & Prof. Code, § 21610, subds. (g), (h).)

6) Provides that a person who makes a false or fictitious statement regarding any of the required information or who violates any of the requirements is guilty of a misdemeanor, punishable

by imprisonment in the county jail not exceeding six months and a fine of $1,000 for a first conviction; a fine of not less $2,000 for a second conviction; and, a fine of not less than $4,000 for a third and subsequent conviction. (Bus. & Prof. Code, § 21610, subds. (i)- (k).)

7) Provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control device or system, including catalytic converters, that alters or modifies the original design or performance of the motor vehicle pollution control device or system. If the court finds that a person has willfully violated this section, the court shall impose the maximum fine that may be imposed in the case, and no part of the fine may be suspended. (Veh. Code, §§ 27156, subds. (c)-(d); 38391.)

8) States that no person shall either individually, or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10852 & 42004; Pen. Code, § 19.)

9) States that no person shall with intent to commit any malicious mischief, injury, or other crime, climb into or upon a vehicle whether it is in motion or at rest, nor shall any person attempt to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended, nor shall any person set in motion any vehicle while the same is at rest and unattended. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10853 & 42002; Pen. Code, § 19.)

10) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

11) Provides that "receiving stolen property" is buying or receiving any property that has been stolen knowing the property is stolen, or concealing, selling, or withholding any property from the owner, knowing the property is stolen. Receiving stolen property that does not exceed $950 is a misdemeanor, as specified, and receiving stolen property that exceeds $950 is a wobbler. (Pen. Code, § 496, subds. (a) & (d).)

12) Provides that "grand theft" is theft that is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified, and states that grand theft is a wobbler. (Pen. Code, §§ 487, 488, & 489, subd. (c).)

13) Provides that "petty theft" is obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and states that petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, §§ 490, 490.2 subd. (a).)

EXISTING FEDERAL LAW:

1) Prohibits buying, receiving, possessing, or obtaining control of a car part, with the intent to sell or otherwise dispose of it, if the person knows that the identification number was removed, obliterated, tampered with, or altered. A person who violates this section shall be fined or imprisoned for not more than ten years, or both. (18 U.S.C. § 2321.)

2) Requires each passenger motor vehicle, as specified, to have a VIN numbers affixed or inscribed on parts present on the vehicle including the engine; transmission; right front fender; left front fender; hood; right front door; left front door; right rear door; left rear door; sliding or cargo doors; front bumper; rear bumper; right rear quarter panel; left rear quarter panel; right side assembly; left side assembly; pickup box, and/or cargo box; rear doors; and, decklid, tailgate, or hatchback. (49 U.S.C §§ 33101 & 33102; 49 C.F.R § 541.5.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Catalytic converter thefts more than quadrupled in 2021 from 2020 —and the trend shows no signs of slowing down this year. There are significant challenges in prosecuting the theft of catalytic converters under current California law. Law enforcement can make arrests of individuals in possession of suspected stolen catalytic converters, but are often unable to prove a case in court. Unlike most major parts of vehicles sold in the United States, under existing law, catalytic converters do not have a serial identification number on them. The serial number is crucial to establish that parts are stolen, even if the stolen vehicle has already been broken down. Therefore, SB 986 will require car dealers to mark vehicles' catalytic converters up for sale. Requiring the marking of catalytic converters would be a tremendous help to law enforcement in their attempts to bring this significant theft issue under control. SB 986 will also require core recyclers to record and log the unique identification number on each catalytic converter along with the seller's name, date, number of catalytic converters sold and the amount of money given in exchange. This log will allow local law enforcement to investigate and prosecute criminals who have sold stolen parts."

2) **Catalytic Converter Theft**: According to a 2021 report by the Congressional Research Service:

> Thefts of catalytic converters, a key part of the emission control systems of internal combustion vehicles, are on the rise. The devices, which are installed not only on passenger vehicles but also on buses, motorcycles, and commercial trucks, use valuable metals to reduce pollutants emanating from the engine. Replacing a stolen catalytic converter can cost a passenger vehicle owner up to $3,000. [...]
>
> Catalytic converters, the sale of which may net thieves $25 to $500 depending on the type and model of vehicle they were attached to, have become targets for theft for several reasons. During the pandemic, many cars and fleet vehicles remained parked in the same spot for extended periods since people were not driving as much due to pandemic

> restrictions. These vehicles might be attractive targets for thieves because people were not paying attention to them and because the value of the precious metals they contain has risen sharply. [...]
>
> Federal laws to deter vehicle and vehicle parts thefts were enacted in 1984 and again in 1992 to address rising theft of motor vehicles that were taken to illicit body shops, often called "chop shops," for disassembly. The parts—mainly bumpers, hoods, fenders and similar large metal parts— were then sold either directly or through a salvage yard. These laws simplified the tracing and recovery of parts from stolen vehicles and established a national information system that enables states to access automobile titling information. In implementing these laws, the National Highway Traffic Safety Administration (NHTSA) issued a Federal Motor Vehicle Theft Standard, which requires manufacturers to apply or stamp a car's unique Vehicle Identification Number (VIN) on the engine, transmission, and a dozen other major vehicle parts so law enforcement agencies can better identify vehicles from which the parts were stolen. However, the standard does not require automakers to stamp identification numbers on catalytic converters. [...]
>
> Identifying stolen vehicle parts has been facilitated by the National Motor Vehicle Title Information System, established by federal law in 1992 (P.L. 102-519) to keep stolen vehicles from being resold. Administered by the American Association of Motor Vehicle Administrators, it requires regular reporting by scrap recyclers and salvage yards. Harnessing the cooperation of these businesses could lead to a decline in catalytic converter thefts if additional documentation were to be required before converters are purchased. [...]
>
> California has some of the most stringent standards regarding the sale of catalytic converters to scrap recyclers. [...] Thus far, CRS has not located evidence about the effectiveness of California's standards in reducing converter theft.

(*Addressing Catalytic Converter Theft*, Congressional Research Service. (July 6, 2021) <https://crsreports.congress.gov/product/pdf/IF/IF11870/2>.)

3) **Permanent VIN Marking**: This bill would prohibit car dealers and retailers from selling a new or used vehicle equipped with a catalytic converter without the VIN being marked on the converter. Accordingly, this bill would require the car dealers and retailers to ensure that the catalytic converter is stamped with the VIN before selling the vehicle. As explained above, federal regulations require auto manufacturers to apply or stamp a car's unique VIN on the engine, transmission, and a dozen other major vehicle parts, but currently the regulations do not require manufactures to stamp a vehicle's catalytic converter with the VIN. (49 U.S.C §§ 33101 & 33102; 49 C.F.R § 541.5.) As such, a state law requiring the auto manufacturer to mark the VIN on the catalytic converter is arguably preempted. (49 U.S.C. § 33118 [when a motor vehicle theft prevention standard is in effect, a state may not have a different motor vehicle theft prevention standard for a motor vehicle part]; *see e.g.*,

English v. Gen. Elec. Co. (1990) 496 U.S. 72, 79–80 (1990); *Schneidewind v. ANR Pipeline Co.* (1988) 485 U.S. 293, 299–300.) However, there is pending federal legislation with bipartisan support which would require manufacturers to affix the VIN on catalytic converters. (See, H.R. 6394 (Baird), of the 117th Congress, 2021-2022, the *Preventing Auto Recycling Theft Act*.)

Opponents of the bill claim that this requirement would impose burdensome obligations on California dealerships and an unnecessary sales ban and that permanent marking of the catalytic converter will take hours of vehicle technician time and cost multiple hundreds of dollars to complete. Opponents have sought amendments that would shift the cost burden of marking the VIN on the catalytic converter from the dealer onto the consumer, presumably by charging the consumer and additional fee at the point of sale. Such an amendment would be inapposite, given that existing law does not prevent dealers from including this cost in their price negations for the vehicle. Further, pending bipartisan federal legislation H.R. 6394 (Baird), if passed, would establish a grant program for law enforcement agencies and automobile dealers to stamp VIN numbers on catalytic converters.

According to the Bureau of Automotive Repair (BAR), engraving or etching catalytic converters with VIN or license plate number may deter theft. It may also alert a reputable scrap dealer that the device is stolen and can help to identify the owner. (BAR, *Catalytic Converter Theft and Smog Check Program,* <https://www.bar.ca.gov/Consumer/Smog_Check_Program/Catalytic_Converter_Theft>.) It should be noted, however, that amending existing statutes to add catalytic converters to the list of vehicle parts that must bear VINs might be ineffective, since stolen converters are rarely sold for installation on other vehicles. (Congressional Research Service, *Addressing Catalytic Converter Theft* (July 6, 2021) <https://crsreports.congress.gov/product/pdf/IF/IF11870/2>.) The value is in the metals inside the converter canister, not the canister itself, so labeling would be ineffective once the metals were detached from the canister. (*Ibid.*)

4) **Core Recyclers:** A core recycler is any person or business that buys used individual catalytic converters, transmissions, or other parts previously removed from a vehicle. (Bus. & Prof. Code, § 21610.) Existing law requires core recyclers who accept catalytic converters for recycling to maintain written records pertaining to the transaction for two years. (*Ibid.*) This information includes the place and date of each sale or purchase; the name, driver's license number and state of issue, or California-issued identification number, of the seller and the vehicle license number, including the state of issue of the vehicle used in transporting the catalytic converter to the core recycler; and, if the seller is a business, the name, address and telephone number of the business. (*Ibid.*) A core recycler must also collect a description of the catalytic converter and a statement indicating either that the seller of the catalytic converter is the owner or the name of the person or business from whom the seller has obtained the catalytic converter, as specified. (*Ibid.*)

Existing law also requires core recyclers engaged in the selling or shipping of used catalytic converters to retain information on the sale that includes the name of each person to whom the catalytic converter is sold; the quantity of converters sold; the amount that was paid for each converter; and the date if the transaction. (Bus. & Prof. Code, § 21610.)

Any person who makes a false or fictitious statement regarding the above information, or who fails to maintain the information as prescribed, is guilty of a misdemeanor, punishable by up to 6 months jail, or by a fine of up to $4,000, or both. (Bus. & Prof. Code, § 21610, subd. (k).)

In addition to the above requirements, this bill would require a core recycler to include in their written records any unique identifying number, including a VIN number if it is engraved on the catalytic converter. However, this requirement does not apply if the core recycler has a written agreement with the seller for the transaction that includes a log or other regularly updated record that describes each catalytic converter with sufficient particularity including any identification numbers, VIN or other markings.

5) **Similar Catalytic Converter Bills:** AB 2682 (Gray), which passed this Committee by a 6-0 vote, would prohibit any automotive repair dealer that installs or replaces a catalytic converter on a motor vehicle to ensure that the catalytic converter is permanently marked with the VIN of the vehicle on which it is being installed. AB 2682 further creates a new misdemeanor offense of removing any VIN that has been added to a catalytic converter, except as specified. AB 2682 is similar to this bill, as both bills would prohibit a dealer or retailer from selling a new or used vehicle unless the catalytic converter has been engraved with the VIN. However, this bill does not create a new misdemeanor offense.

   AB 1740 (Muratsuchi), which was not referred to this Committee, would require a core recycler to maintain a written record of the year, make, and model of the vehicle from which the catalytic converter was removed. AB 1740 also exempts core recyclers from specified requirements provided that they hold a written agreement with a business regarding the transactions and the written agreement includes a log of all that describes each catalytic converter received with sufficient particularity including any identification numbers or marking. AB 1740 prohibits core recyclers from purchasing catalytic converters from specified persons, and requires when a core recycler purchases or receives a converter from the owner of the vehicle from which it was removed to verify that the converter is permanently marked with a VIN number matching the owner's vehicle.

   AB 1740 (Muratsuchi) is similar to this bill, as both bills would exempt core recyclers from specified requirements provided that they hold a written agreement with a business regarding the transactions and the written agreement includes a log of all that describes each catalytic converter received with sufficient particularity including any identification numbers or marking. However, unlike AB 1740, this bill does not require core recyclers to only accept converters that are marked with a VIN matching the VIN of the vehicle from which it was removed. Currently, catalytic converters are not required to be permanently marked with VIN numbers. Should AB 1740 be enacted, individuals seeking to sell their catalytic converters to core recyclers will be required to spend time and money to get their converter marked with a VIN prior to the sell. Therefore, this bill avoids the unintended consequence of deterring lawful owners of used catalytic converters from recycling their used catalytic converters in a legal manner.

6) **Argument in Support**: According to the *Los Angeles County District Attorney's Office*, the sponsor of this bill, "Most major vehicle parts such as the engine block, transmission, frame, doors, and firewall sold in the United States are identified by an imprinted serial number relating to the unique Vehicle Identification Number (VIN). These identification markings

allow law enforcement to establish that parts are stolen, even if the stolen vehicle has already been fully broken down. However, this serial number identification process currently does not apply to catalytic converters, and as such, vehicle manufacturers do not mark these parts with a serial number. Consequently, law enforcement may arrest individuals in possession of hundreds of suspected stolen catalytic converters but be unable to prove a single case in court because without any identifying markers, it is impossible to determine the source of these parts. Unless police catch these individuals in the act of theft, there is virtually no way to identify the crime victims to prove that the parts were stolen. This legal loophole has resulted in an explosion in catalytic converter thefts, which currently is a crime that brings high profits with very little fear of legal repercussions.

"Another legal loophole in need of a remedy relates to core recyclers of used vehicle parts. The only existing statute in California that addresses a core recycler's obligations regarding the purchase of used catalytic converters, maintenance of its records, and payment restrictions, is Business and Profession Code section 21610. That statute was enacted in response to a spike in catalytic converter thefts in California with the hope that these recordkeeping obligations and payment restrictions would dissuade end buyers from purchasing stolen catalytic converters, as well as assist law enforcement with identifying suspects. However, there is no obligation for a core recycler to obtain information necessary to identify the origin of a used catalytic converter purchased by the core recycler. Rather, if the core recycler and seller of a used catalytic converter have a written agreement between them, the core recycler is relieved from any obligation or duty to keep a record that would provide a traceable means of identifying the used catalytic converter. Under existing law, the core recycler or seller need only produce to an investigating law enforcement agency a copy of the sale and purchase contract, but that contract need not have any detailed identification of the converters being sold. Thus, there is no way to verify that any catalytic converter found in the possession of the core recycler or seller was in fact sold under that contract or instead obtained illicitly outside that contract. This loophole allows unscrupulous actors to use a purchase and sales contract to shield the origin of stolen catalytic converters.

"SB 986 would close these loopholes by adding section 27150.9 to the Vehicle Code to require new and used car dealers to mark the catalytic converters of vehicles on sale. The application of a VIN to a catalytic converter is usually done by etching, a process that is both easy and inexpensive. This bill would also amend Business and Professions Code section 21610 to require core recyclers to record any unique identification number etched or engraved on a catalytic converter in addition to all other current identification requirements. It would also clarify that the core recycler's obligations under that section are only relieved if the written agreement between the recycler and the seller includes a log or other regularly updated record of each used catalytic converter purchased pursuant to the written agreement that describes each catalytic converter with sufficient particularity, including any identification numbers or markings, to be able to reasonably match any catalytic converter in the core recycler's inventory to the written agreement under which it was received."

7) **Argument in Opposition**: According to the *California New Car Dealers Association*, "While we agree that catalytic converter theft is an issue, we differ in our approach regarding the etching or engraving of catalytic converters. Senator Umberg proposes to bar dealers from selling new and used vehicles equipped with a catalytic converter unless the catalytic converter has been engraved or etched with the vehicle identification number (VIN) of the vehicle to which it is attached.

"While older model year vehicles may have catalytic converters that are relatively easy to access, many newer vehicles do not. For example, many vehicle models incorporate the catalytic converter as a part of the exhaust manifold, essentially making the catalytic converter almost impossible to access without taking apart half of the vehicle's engine. In many cases, permanent marking of the catalytic converter will take hours of vehicle technician time and cost multiple hundreds of dollars to complete.

"While new car dealers do sell used vehicles, the vehicles usually targeted for catalytic converter theft are "aged out" of most new car dealer lots simply due to mileage, age, and condition and are instead sold via private party on platforms like Craigslist, eBay Motors, and Facebook Marketplace, where there would be no mandate to permanently mark the catalytic converter before sale. Additionally, given that newer vehicles have catalytic converters that are often much more difficult to access than on older vehicles, we are unsure that this sales ban would have a meaningful impact on the problem at hand."

8) **Related Legislation**:

a) AB 1622 (Chen), would have required the Department of Consumer affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter. AB 1622 was never heard by Assembly Transportation Committee.

b) AB 1659 (Patterson), would have revised the definition of an automobile dismantler to include a person who keeps or maintains two or more used catalytic converters that are not attached to a motor vehicle on property owned by the person, or under their possession or control, for specified purposes. AB 1659 was never heard by Assembly Transportation Committee.

c) AB 1740 (Muratsuchi), would require a core recycler to maintain a written record of the year, make, and model of the vehicle from which the catalytic converter was removed. AB 1740 is pending in Senate Appropriations Committee.

d) AB 1984 (Choi), would have prohibited the purchase, sale, receipt, or possession of a stolen catalytic converter, and specifies that a peace officer need not have actual knowledge that the catalytic converter is stolen to establish probable cause for arrest, and that in a prosecution of the section, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. AB 1984 was never heard by Assembly Transportation Committee.

e) AB 2398 (Villapudua), would have created a new crime of possession of five or more detached catalytic converters. AB 2398 failed passage in this Committee.

f) AB 2407 (O'Donnell), would require a core recycler to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. AB 2407 is pending in Senate Business, Professions and Economic Development Committee.

g) AB 2682 (Gray), would prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the VIN of the vehicle to which it is attached. AB 2682 is pending in Senate Business, Professions and Economic Development Committee.

h) SB 919 (Jones), is substantial similar as AB 1984 (Choi). SB 919 failed passage in Senate Public Safety Committee.

i) SB 1087 (Gonzalez), would prohibit any person from purchasing a used catalytic converter from anybody other than certain specified sellers, including an automobile dismantler, an automotive repair dealer, or an individual possessing documentation, as specified, that they are the lawful owner of the catalytic converter. SB 1087 will be heard by this Committee today.

j) H.R. 6394 (Baird), of the 117th Congress, 2021-2022, the *Preventing Auto Recycling Theft Act*, would require the National Highway Traffic Safety Administration to revise the motor vehicle theft prevention standards which require VIN numbers to be affixed or inscribed on parts present on the vehicle to include catalytic converters. H.R. 6394 would also establish a grant program for law enforcement agencies and automobiles to stamp VINs on catalytic converters. H.R. 6394 is pending in the House Subcommittee on Highways and Transit.

9) **Prior Legislation**:

a) SB 627 (Calderon), Chapter 603, Statues of 2009, requires core recyclers, as defined, to comply with additional recordkeeping and identification procedures and new payment restrictions when purchasing catalytic converters.

b) SB 366 (Umberg), Chapter 601, Statutes of 2021, reconstituted the Vehicle Dismantling Industry Strike Team, which amongst other things, requires a study the number of unlicensed automobile dismantlers investigated and the number of investigations that resulted in an enforcement action for the theft of catalytic converters.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles District Attorney (Sponsor)
Auto Club of Southern California (AAA)
Beverly Hills; City of
Buena Park; City of
California Contract Cities Association
California District Attorneys Association
California Low-income Consumer Coalition
City of Long Beach
City of Rancho Palos Verdes
Consumers for Auto Reliability & Safety
Fountain Valley Police Department

Huntington Beach; City of
Insurance Auto Auctions, INC.
Lakewood; City of
Lasd
Orange County Sheriff's Department
Prosecutors Alliance California
Prosecutors Alliance of California

Oppose

Alliance for Automotive Innovation
California New Car Dealers Association
National Auto Auction Association

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

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 1021 (Bradford) – As Amended June 9, 2022

SUMMARY: Allows diversion for first time misdemeanor driving under the influence (DUI) offenders and outlines the terms and conditions of such diversion. Specifically, **this bill**:

1) Prohibits DUI offenses from being diverted under current misdemeanor diversion laws, except as specified.

2) Provides that a court may allow diversion for DUI offenses after hearing from the prosecution and defense.

3) Authorizes diversion if the following requirements are met:

   a) The defendant has not been previously convicted of any DUI;

   b) The defendant is not currently enrolled in misdemeanor diversion, and has not previously completed in misdemeanor diversion within 10 years;

   c) The defendant does not have a commercial driver's license;

   d) The defendant was not operating a commercial vehicle during the offense;

   e) The defendant is given a "Watson" advisement, i.e. the court informs the defendant that driving under the influence is extremely dangerous to human life and if the defendant commits another DUI which causes the death of a person, they may be charged with murder.

4) States that a DUI case may be diverted for a period not exceeding 24 months and authorizes to impose terms and conditions appropriate to the defendant's specific situation.

5) Requires the terms of diversion to include the following:

   a) Installation of an ignition interlock device (IID) for a period of not less than 12 months,

   b) Participation for no less than 3 or 9 months in a specified DUI program, depending on whether the defendant's blood alcohol concentration (BAC) was greater or less than 0.20 percent or if the defendant had refused to submit to a chemical test; and,

   c) Participation in at least one victim impact panel.

6) Requires the court, upon a defendant's successful completion of diversion, to dismiss the case, record the dismissal, and transmit the record to the Department of Justice (DOJ) and the Department of Motor Vehicles (DMV).

7) Requires the court to hold a hearing for the purpose of terminating diversion and resuming criminal proceedings when it appears to the court that the defendant is not complying with the terms of diversion.

8) Requires an IID manufacturer authorized to operate in the state to maintain participant files for every person the manufacturer provides an IID to.

9) Mandates that the participant file must comply with the following:

   a) Include information related to the installation, service, calibration, retrieved data, and removal of the IID;

   b) Be stored in either paper or electronic format;

   c) Be retained for no less than 3 years after an IID is removed from a vehicle;

   d) Be stored in a secured manner designed to reasonably prevent unauthorized access; and,

   e) Allow access by the DMV, including online access for files stored electronically.

10) Requires a court and the DMV to notify a defendant with a diverted DUI offense, that an IID is necessary whenever they operate a vehicle.

11) Specifies that a defendant enrolled in DUI diversion must have an IID installed for a term imposed by a court, but in no case for less than a period of 12 months.

12) Extends, by 60 days, the time period for which an IID is required during DUI diversion, if an IID detects a BAC level over 0.03 percent when a vehicle is turned on and a subsequent test within does not show a BAC level at 0.03 percent or under.

13) Contains legislative findings and declarations.

EXISTING LAW:

1) Provides it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Veh. Code, § 23152 subds. (a), (f), & (g).)

2) Provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23512(b).)

3) States that a person who is convicted of a first DUI is subject to the following penalties when given probation:

a) Possible 48 hours to 6 months in jail;

b) A fine of $390 to $1,000 plus penalty assessments;

c) Completion of a 3-month treatment program or a 9-month program if the BAC was .20% or more; and,

d) Six month license suspension or 10 month suspension if 9-month program is ordered, and;

e) States that a restricted license may be sought upon proof of enrollment or completion of program, proof of financial responsibility and payment of fees. However, the court may disallow the restricted license. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23538(a)(3).)

4) States that a person convicted of a first DUI offense, if not given probation, faces punishment of up to six months in jail, 96 hours of which is required, a suspension of their driver's license contingent upon completion of a specified DUI program, and applicable fines and penalty assessments. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23536.)

5) States that if a first time DUI offender is found to have a blood concentration of .20% BAC or above, or refused to take a chemical test, the court shall refer the offender to participate in a 9-month licensed program. (Veh. Code, § 23538 subd. (b)(2).)

6) States that a first-time DUI offender sentenced to a 9-month program because of a high BAC or a refusal shall have their license suspended for 10 months. The license may not be reinstated until the person gives proof of insurance and proof of completion of the required program. (Veh. Code, § 13352.1.)

7) Provides that a person convicted of a first-time DUI may apply for a restricted license for driving to and from work and to and from a driver-under-influence program if specified requirements are met, paying all applicable fees, submitting proof of insurance and proof of participation in a program. (Veh. Code, § 13352.4.)

8) Provides that a person who is convicted of a first DUI with injury, if not given probation, faces punishment with 16 months, 2 or 3 years state prison, or 90 days to one year in county jail. Applicable fines and penalty assessments, a specified DUI program, and a one year driver's license suspension also apply. (Veh. Code, §§ 13352 subd. (a)(2), 23554.)

9) Provides that a person who is convicted of a first DUI with injury, if given probation, faces punishment of 5 days to one year in jail, applicable fines and penalty assessments, applicable DUI programs, and a one year driver's license suspension. (Veh. Code §§ 13352, subd. (a)(2), 23554.)

10) Creates a pilot project that requires a person convicted of a second or subsequent DUI or DUI causing injury to install and maintain an IID for 12 months for a second offense, 24 months for a third offense and for 36 months for a fourth or subsequent offense. Proof of installation of the IID, along with other requirements, permits a person to get a restricted license after a

specified period of time. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

11) Provides that the existing IID pilot project shall sunset on January 1, 2026. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

12) Provides for misdemeanor diversion, at the discretion of the judge, for misdemeanors except for domestic violence, stalking, and sex offender registerable offense. (Pen. Code, § 100.1.95.)

13) Authorizes diversion for misdemeanor DUI offenses, including those with injury, for specified military veterans. (Pen. Code, § 1001.80.)

14) Precludes any deferred entry of judgment dismissals, as well as suspensions or stays in proceedings for DUI offenses. (Veh. Code, § 23640.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "In 2020, AB 3234 directed that diversion programs be available for all misdemeanor crimes, including DUI. Since that time, many of us expressed the need for strict guidelines to ensure serial DUI offenders aren't avoiding penalties or accountability for their crimes. Additionally, a recent state Appellate Court decision ruled against diversion programs for misdemeanor DUI convictions. This is an opportunity for the Legislature to prescribe smart standards for DUI diversion programs that will help rehabilitate offenders, reduce recidivism, and protect public safety."

2) **DUI Diversion and Recidivism**: According to the National Highway Traffic Safety Association (NHTSA), as of 2006, there were several states that provided for diversion programs in some form. (*Countermeasures That Work: A Highway Safety Countermeasures guide for State Highway Safety Offices, Tenth Edition*. NHTSA. (2020) <https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf> [as of Jun. 17, 2022] at pg. 1-41.) (*NHTSA:Countermeasures*) These states include Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas. (*Pre-Trial Diversion Program for DUIs*. Traffic Resource Center for Judges. (TRCJ) (2015) <Pre-Trial Diversion Programs for DUIs - Traffic Resource Center - SLIDELEGEND.COM> at pg. 2.)

   The evidence of effectiveness of diversion programs has been mixed, with some studies showing a reduction in recidivism, and other showing no benefit. (*NHTSA: Countermeasures* at 1-41.) The Centers for Disease Control and Prevention (CDC) has cautioned that diversion programs resulting in no record of an offense could prevent the identification of repeat offenders. (*Limits on Diversion Programs and Plea Agreements*. CDC. (2022). <https://www.cdc.gov/transportationsafety/calculator/factsheet/plealimits.html#:~:text=Diversion%20programs%20allow%20DWI%20offenders,offender's%20record%20in%20some%20states.> [as of Jun. 17, 2022].) (*CDC on Diversion.*)

3) **Required Use of IIDs**: Existing law gives courts discretion to impose an IID upon a first time DUI offender. (Veh. Code, § 23575.3.) By allowing the courts discretion to impose an

IID on first time offenders, it provides the court an opportunity to tailor the sentence in the appropriate manner to the facts of the crime, the person's history, and the person's current circumstances.

A judge may determine that an IID is not the most appropriate remedy when a person has been convicted of a first time DUI and there is no evidence of alcohol abuse or other history of poor judgment. A court might find that imposition of an IID is not the best remedy if the defendant is part of a household where a single car is shared between the defendant and other family members and requiring an IID on that car will burden family members that have engaged in no wrongdoing.

"Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.)

In terms of studies on the efficacy of IIDs, a June 17, 2016 DMV report on the IID pilot project evaluated the project from two perspectives, an "intent to treat" evaluation and "the restricted license evaluation." "Intent to Treat" was the group of individuals subject to the requirement that they install and IID, regardless of whether they installed an IID and complied with the law. "The restricted license evaluation" consisted of the individuals that were subject to the IID mandate and complied with the requirements of the program. DMV found that the IID-restricted license program had "mixed traffic safety impacts."

For first time DUI offenders in the pilot project, the study found in the Intent-to-Treat Evaluation:

- The AB 91 program is not associated with an increase or decrease in the odds or hazards of a subsequent DUI conviction over the 12-month time period.

- The AB 91 program is not associated with a reduction or increase in the odds or hazards of a subsequent DUI incident over the 12-month time period.

First offenders in non-pilot counties have a 6.1% lower hazards or odds of a subsequent crash relative to those in the pilot counties over the 12-month time period. (California DMV. *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California.* p. xi, June 17, 2016" https://www.dmv.ca.gov/portal/wcm/connect/b1eba1e5-9155-40ba-9a74-0e6e19a0d1bc/S5-251.pdf?MOD=AJPERES

For first offenders in the Restricted License Evaluation portion the study found that for people with an IID, while there was an initial lower rate DUI in the first 182 days following their conviction, that lower rate diminished over time. In addition, there was a higher rate of hazards or subsequent crashes with those with the IID and that trend increased over the 12 month period. (*Id.* p. xii)

The study also found that:

> The study findings indicate a negative association between having an IID-restricted license and subsequent crash involvement for all DUI offender groups. For the first and second DUI offenders, higher crash risk among those with the AB 91 IID-restricted license increases over time relative to DUI offenders with a suspended license. Therefore, although the AB 91 IID program is associated with a significant reduction in DUI recidivism among all DUI offender groups, the program is also associated with an increase in crash involvement among all DUI offenders that are subject to the program. This is particularly problematic since a substantial proportion of these crashes are those involving injuries and/or fatalities (of the overall crash involvement measured in the study, the proportion of fatal/injury crashes ranged from mid-30% to low-40% for different DUI offender groups—which is consistent with what prior California evaluations have reported for these offender groups). (*Id.* p. xv)

This bill would require that an IID be installed for a period of 12 months for those diverted. The question posed by this requirement is whether an IID would be necessary in all cases given the findings by the DMV.

4) **Argument in Support**: According to the *California Public Defenders Association*, "According to the Traffic Resource Center for Judges, at least 8 states, including Florida, Georgia, Indiana, Kansas, Louisiana, Oregon, Pennsylvania, and Texas, offer pre-trial DUI diversions statewide or in specific counties. (Pre-trial Diversion Programs for DUI's, Issue Brief 2 (February 2015) the Traffic Resource Center for Judges, National Center for State Courts.)1 Diversion is demonstrably more effective at reducing recidivism rates and protecting public safety than the current 'one size fits all' method of forcing poor, often mentally ill Californians to shoulder the burden of a criminal conviction, placing them on summary probation and hoping for the best without giving them the tools they need to learn from their mistake.

"Defendants whose cases are diverted and monitored by the court are far less likely to reoffend, and far more likely to find employment in the future than those who are simply convicted.2 Because diversion statutes allow courts to make individualized determinations about each case and are more likely to prevent crime than traditional prosecution models, it is in the public's interest to allow their use.

"SB 1021 provides judges with the ultimate authority to offer judicial diversion so long as the judge (1) considers whether a defendant is suitable, amenable and may benefit from the rehabilitative treatment and service plan provided under the judicial diversion program as specifically tailored to that defendant, and (2) does not abuse the exercise of such discretion.3 SB 1021 also takes into account the current political reality that judges, who are already vested with sentencing discretion, are in the best position to dismiss in the interests of justice, or to weigh factors in mitigation and aggravation, or to consider leniency. Diversion considerations are more closely related to a judge's sentencing function than a prosecutor's charging function.

"SB 1021 strikes a proper balance by effectively providing judges with the proper authority and appropriate discretion to offer diversion to a small subsection of DUI defendants to allow a person who made a mistake and committed a DUI to learn from their mistake and not have

ongoing costs associated with a DUI, which is particularly critical for those who may otherwise face severe immigration consequences, including DACA recipients. During the last legislative session, on July 13, 2021, when AB 282 was before the Senate Public Safety Committee, a senior staff attorney at Immigrant Legal Resource Center testified about the significant negative impact of DUI convictions on DACA recipients. She explained that under existing law, non-citizen defendants charged with a misdemeanor DUI face a deportable conviction but allowing DUI diversion would authorize judges to take such immigration consequences into consideration to allow judicial diversion for a defendant who is a DACA recipient…"

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "First, as you are aware, great concern had been expressed by Governor Newsom and others that the misdemeanor diversion bill (A.B. 3234) enacting Penal Code section 1001.95 allowed diversion for persons charged with driving under the influence. This concern was quite justified considering that California's current prohibition on diversion for drunk drivers embodied in Vehicle Code section 23640 (former Veh. Code, § 23202) has contributed to the steady decline of drunk driving and alcohol-related accidents in California.

"Second, there appears to be ***no*** concrete evidence that any diversion program similar to that which would be enacted by S.B. 1021(i.e., a program allowing diversion for persons arrested for driving under the influence over prosecution objection) has had beneficial effects. Whereas there ***is*** evidence (dating back decades) that the ban on diversion does act as a deterrent to drunk driving and drunk driving fatalities. For example, after California's prohibition on diversion was enacted as part of A.B. 541, a study funded by the Office of Traffic Safety and National Highway Traffic Safety Administration (hereafter "NHTSA") analyzed its impact. The study concluded that AB 541 had an "impact in lowering alcohol accident, total accident, and major conviction rates among DUI drivers." (See An Evaluation of the Specific Deterrent Effects of Alternative Sanctions for First and Repeat DUI Offenders (Volume 3 of "An Evaluation of the California Drunk Driving Countermeasure System") https://www.dmv.ca.gov/portal/uploads/2020/04/s3-95.pdf; see also The Traffic Safety Impact of California's New Drunk Driving Law (AB 541)-An Evaluation of the First Nine Months of Experience https://www.dmv.ca.gov/portal/uploads/2020/04/S3-87.pdf; An Abstract of The Long-Term Traffic Safety Impact of Pilot Alcohol Abuse Treatment as an Alternative to License Suspensions (Volume 2 of "An Evaluation of the California Drunk Driving Countermeasure System") https://www.dmv.ca.gov/portal/uploads/2020/04/S3-90.1.pdf.)

"Third, in the previous version of S.B. 1021, as well as in your predecessor bill (S.B. 421), diversion was made contingent upon a lack of objection by the prosecution. This condition has been eliminated in the most recent version of the bill and is a critical check on diversion programs. Significantly, while only a very small percentage of states allow diversion for persons charged with DUI, acceptance into such programs is most often determined by the state's attorney. (See https://slidelegend.com/pre-trial-diversion-programs-for-duis-traffic-resource-center_59ce6b141723ddb58a7a7563.html.)

"Fourth, in the previous version of S.B. 1021, as well as in your predecessor bill (S.B. 421), a grant of diversion counted as a prior conviction if the person recidivated. While we recognize that treating a diversion and dismissal as a conviction is incongruous, the statute could be written to treat diversion for DUI in a manner similar to a post-plea deferred entry of

judgment program. This would have a dual benefit of creating less incongruity while simultaneously avoiding the problem of a delayed trial (which *always* makes conviction more difficult) when the person fails to comply with the terms of diversion. Moreover, providing an initial break to a defendant charged with driving under the influence while treating the incident as a prior conviction if the person recidivates is logical given that the second offense reveals the diversion was not effective.

"Fifth, at a minimum, before enacting this bill, *some* investigation into the effectiveness of DUI diversion programs in other states should be undertaken. A determination of whether those programs have undergone a statistical study measuring the program's effectiveness should be made. And, to the extent such measures exist, an analysis comparing any results between the programs should be conducted.

"Sixth, a person is eligible for diversion regardless of whether they have previously been convicted of second-degree murder based on driving under the influence (i.e., a "*Watson*" murder) and regardless of whether they have been convicted of gross vehicular manslaughter while intoxicated in violation of Penal Code section 191.5. Notably, a conviction for either of these two offenses can occur with or without a violation of Vehicle Code section 23152 simultaneously being charged…"

6) **Prior Legislation**:

a) SB 421 (Bradford) of the 2021-2022 legislative session, would have authorized diversion for specified DUI offenses. SB 421 was held in the Senate Appropriations Committee.

b) AB 282 (Lackey) of the 2021-2022 legislative session, would have explicitly prohibited diversion for specified DUI offenses. AB 282 was held in the Senate Public Safety Committee.

c) AB 3234 (Ting) Chapter 334, Statutes of 2020, created diversion for most misdemeanor offenses, as specified.

d) SB 545 (Hill) of the 2019-2020 legislative session, would have required IIDs to be installed for a period of six months for first time convicted DUI offenders. The hearing SB 545 in the Assembly Public Safety Committee was cancelled at the request of the author.

e) SB 1046 (Hill), Chapter 783, Statutes of 2016, extended the IID pilot program in certain counties and required installation of IIDs for specified DUI offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

Advocates for Highway and Auto Safety
Coalition of Ignition Interlock Manufacturers
California Public Defenders Association
Distilled Spirits Council of The United States

National Alliance to Stop Impaired Driving
National Safety Council
Recording Artists Against Drunk Driving
Responsibility.org
San Francisco Public Defender
Students Against Destructive Decisions
Traffic Safety Partners

1 Private Individual

Opposition

AAA Northern California, Nevada & Utah
American Property Casualty Insurance Association
Arcadia Police Officers Association
Auto Club of Southern California (AAA)
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Government Employees Insurance Company
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Mothers Against Drunk Driving
National Association of Mutual Insurance Companies
Newport Beach Police Association
Pacific Association of Domestic Insurance Companies
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Personal Insurance Federation of California
Placer County Deputy Sheriffs' Association
Pomona Police Officer Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

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

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 1262 (Bradford) – As Introduced February 17, 2022

SUMMARY: Requires a superior court clerk to permit filtering searches of publicly-accessible electronic court indexes by a defendant's driver's license number, or date of birth, or both.

EXISTING LAW:

1) Requires the clerk of the superior court to keep such indexes as will insure ready reference to any action or proceeding filed in the court. There shall be separate indexes of plaintiffs and defendants in civil actions and of defendants in criminal actions. The name of each plaintiff and defendant shall be indexed and there shall appear opposite each name indexed the number of the action or proceeding and the name or names of the adverse litigant or litigants. (Gov. Code, § 69842.)

2) Finds and declares that local criminal justice agencies, such as policing agencies and courts, need quick access to accurate criminal offender record information. (Pen. Code, § 13100.)

3) Authorizes local criminal justice agencies to compile criminal offender record information, prohibits general access to it, except as specified, and imposes reporting requirements to the Department of Justice (DOJ). (Pen. Code, §§ 13100 et seq.)

4) Defines "criminal offender record information" as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 13102.)

5) Requires specified information be included in criminal offender record information, such as name, sex, height, weight, and date of birth. (Pen. Code, § 13125.)

6) Authorizes local criminal justice agencies to furnish criminal offender record information to specified entities if they demonstrate a special need to acquire such information. (Pen. Code, § 13300.)

7) Prohibits any person not authorized by law to receive a record, or information obtained from a record, to knowingly buy, receive, or possess such record or information. (Pen. Code, § 13304.)

8) Authorizes the DOJ to make a complete and systematic record index of all criminal offender record information received. (Pen. Code, § 11104.)

9) Makes it a misdemeanor for any employee of the DOJ, or any other authorized individual to furnish such information to a person not authorized by law to receive it. (Pen. Code, §§

11141 & 11142.)

10) Requires DOJ to furnish state summary criminal history information to specified entities, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Pen. Code, § 11105, subd. (b).)

11) Allows the DOJ to release criminal history information to an official of a city, county, or district if expressly authorized by statute, ordinance or regulation. (Pen. Code, § 11105, subds. (b)(10)-(11).)

12) Authorizes the DOJ to release criminal history information to specified entities, if they demonstrate a "compelling need" for the information (Pen. Code, § 11105, subd. (c).)

13) Outlines the amount of criminal offender information the DOJ is allowed to furnish, dependent on who the recipient is. (Pen. Code, § 11105(k)-(p).)

14) Precludes an employer from asking applicants to disclose information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been dismissed or ordered sealed, and precludes any employer from seeking or utilizing such information as a factor in determining any condition of employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. (Lab. Code, § 432.7 subd. (a)(1).)

15) Makes certain exemptions for employers hiring peace officers, health facility personnel, and other specified prospective employees. (Lab. Code, § 432.7.)

16) Requires employers to follow certain procedures prior to considering an applicant's criminal history as part of the hiring process. (Gov. Code, § 12952.)

17) Authorizes consumer reporting agencies to furnish consumer reports only under specified circumstances, including for the purpose of employment. (Civ. Code, § 1786.12.)

18) Precludes consumer reporting agencies from making or furnishing any report that contains, among other things, convictions that occurred more than seven years from the date of the report. (Civ. Code, § 1786.18.)

EXISTING FEDERAL LAW:

1) Authorizes consumer reporting agencies to furnish a consumer report for employment purposes, among other things. (15 U.S.C.S., § 1681b.)

2) Precludes consumer reporting agencies from making any report that contains, among other things, convictions that occurred more than seven years from the date of the report. (15

U.S.C.S., § 1681c.)

3) Preempts state laws as they relate to information contained in consumer reports if such state laws are inconsistent with federal law. (15 U.S.C.S., § 1681t.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1262 will return public court record access to the status quo by allowing an individual to search and filter results by someone's date of birth and driver's license number. This bill is in response to a recent court decision which called for the removal of two identifiers (date of birth and driver's license number) from public court records. Many courts have since removed the ability to search and filter records based on date of birth and/or driver's license number.

   The All of Us or None vs Hamrick decision did not prohibit the use of background checks entirely, nor did it prohibit being able to search the court indexes. Companies, nonprofits, apartment owners, and others will continue to perform background check on applicants, regardless of the outcome of this bill. Whether it be for liability or insurance purposes, or an organization wanting to maintain the safest environment, the Hamrick decision does not change these practices. But by prohibiting the use of these identifiers when searching, we are allowing a delay in that person's background check being completed and their application accepted, even if the applicant provided those identifiers willingly for the purpose of a background check."

2) **Criminal History Databases in California**: Access to person's summary criminal history information is generally prohibited and only allowed to be disseminated if specifically authorized in statute. "The state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records. [Citation.] These records are compiled without the consent of the subjects and disseminated without their knowledge. Therefore, … custodians of the records, have a duty to 'resist attempts at unauthorized disclosure and the person who is the subject of the record is entitled to expect that his right will be thus asserted.'" (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-66.) "The language of Penal Code section 13300 et seq., demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule." (*Id.* at 164.)

   The DOJ is tasked with maintaining state summary criminal history information and the Attorney General is required to furnish state summary criminal history information only to statutorily specified entities or individuals for employment, licensing, volunteering etc. (Pen. Code, § 11105.) In addition to the specified entities authorized to receive state summary criminal history information, DOJ may furnish state summary criminal history information to other specified employers upon a showing of compelling need for the information and to any person or entity when they are required by statute to conduct a criminal background check. (Pen. Code, § 11105, subds. (a)(13) & (c).) The DOJ is required to release specific information depending on who is requesting the information and for what purpose. For example, if a criminal justice agency wants background information for a peace officer, the

DOJ must release not only convictions, but successfully diverted cases and every arrest or detention that did not result in exoneration, among other things. (Pen. Code, § 11105, subd. (k).) For other specified entities, the DOJ can only release convictions that have not had relief granted, and are not able to release information regarding successfully diverted cases. (Pen. Code, § 11105, subd. (p).) Unauthorized release or dissemination of such information is a misdemeanor. (Pen. Code, §§ 11141 & 11142.)

Local summary criminal history refers to the master record of information complied by any local criminal justice agency pertaining to the identification and criminal history of any person such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, § 13300, subd. (a).) Local criminal justice agencies are not allowed to furnish this information except to those specifically authorized in statute. (Pen. Code, § 13300, subd. (b).) Allowing or procuring unauthorized access to such records is prohibited and punishable as a misdemeanor. (Pen. Code, §§ 13302, 13304.)

However, because court records are publicly available (Gov. Code, § 69842), an individual or a company can bypass the DOJ and local criminal justice agencies to gather a great amount of information and create, in essence, their own summary criminal history database. The Rules of Court specify the manner by which electronic trial court records are to be made available to the public. The rules provide that a court maintaining civil case records in electronic form must provide electronic access to them, both remotely and at the courthouse, to the extent it is feasible to do so. (Cal. Rules of Court, Rule 2.503(b).) As to criminal records, the rule states that a court that maintains the criminal case records in electronic form must provide electronic access to them at the courthouse, to the extent it is feasible to do so, but may not provide public remote access. (Cal. Rules of Court, Rule 2.503(c)(5).) Additionally, the rules specify the information to be included in, and excluded from, electronic court indexes, as well as court calendars and registers of action. The contents that must be included in electronically accessible court indexes are case title (unless made confidential by law), party names (unless made confidential by law), party type, date on which the case was filed, and case number. (Cal. Rules of Court, Rule 2.507(b).) The information that must be excluded in electronically accessible court indexes are social security numbers, any financial information, arrest warrant information, search warrant information, victim and witness information, ethnicity, age, gender, government-issued identification card numbers, driver's license numbers, and dates of birth. (Cal. Rules of Court, Rule 2.507(c).)

This bill would require courts to filter searches by date of birth or driver's license number, thus potentially making each county superior court index a local summary criminal history database. Previously, many county superior court websites had allowed such searches in contravention of Rule 2.507 until recent case law prohibited it.

3) **Recent Case Law Triggering This Bill**: In *All of Us or None – Riverside Chapter vs. Hamrick* (2021) 64 Cal.App.5th 751, (*Hamrick*) plaintiffs alleged that the Riverside County Superior Court improperly maintained the court's records in criminal cases in various ways, one of which was allowing the public to search the court's electronic index on the court's website by a defendant's date of birth and driver's license number, in violation of California Rules of Court, rule 2.507 (*Id.* at p. 759.) The court agreed with plaintiffs that based on the clear language in Rule 2.507, the Riverside County Superior Court improperly authorized

public access to electronic indexes of criminal cases by allowing the user to filter searches by an individual's date of birth or driver's license number. (*Id.* at 803.)

In reaching its holding, the court also examined the history and documents regarding the creation of Rule 2.507 and its predecessor, former Rule 2077. (*Id.* at 774.) The court noted that the Judicial Council, through its advisory and administrative committees, expressly considered and rejected including date of birth and driver's licenses as a search filters. (*Id.* at 771, 775.) As a matter of fact, the Judicial Council, as one of the reasons for excluding such search filters stated,

> "… 'In an electronic database, the date of birth is a confidential field in criminal cases. In *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157 [32 Cal. Rptr. 2d 382], the court held that the municipal court's electronic case management system was confidential as access would allow the compilation of a local criminal history summary in violation of … section 13300. *Under the same reasoning, the court should not allow narrowing the register of actions by [date of birth] as doing so would essentially be creating a local criminal history.*' "

(*Id.* at 775.)

The court then examined the Judicial Council's purpose for restricting such filters. (*Id.*) The court noted that the Judicial Council, when drafting the rule, "…did not intend simply to maximize the public's access to information. Rather, the drafters sought to balance the public's access to court records with the privacy concerns of those involved in criminal proceedings." (*Id.* at 777.) The court then cited a report from the Judicial Council wherein the Judicial Council addressed its balancing concerns,

> " 'In adopting this rule, the council recognized that the 'practical obscurity' of most court records provides individuals with some protection against the broad dissemination of private information that may be contained in public court records. Although court records are publicly available, most people do not go to the courthouse to search through records for private information, and in most cases that information is not widely disseminated. In contrast, if records are available over the Internet, they can be easily obtained by people all over the world.' "

(*Id.* at 777.)

The court followed that line of reasoning and stated that to allow the public to search court indexes by individual date of birth and driver's license information could eliminate the "practical obscurity" of criminal court records. (*Id.*) It went on to mention that without such personally identifying information linking an individual to court index information, the public would generally, "not be able to use a court index to determine whether a particular individual has a criminal record with the court (given the possibly of two defendants having the same name)." (*Id.* at 777-78.) Again, the Judicial Council struck such a balance in order to comply with the mandate imposed by Government Code section 69842 (requiring court to

publish publicly available indexes), while wanting to "'ensur[e] that [criminal] records remain practically obscure.' " (*Id.* at 778.)[1]

This bill would tip that balance. The purpose of making court records accessible is to ensure transparency in governmental operations, while at the same time maintaining the privacy interests of an individual about whom the Government has compiled information. (*United States DOJ v. Reporters Comm. for Freedom of Press* (1989) 489 U.S. 749, 780 [stating, "The privacy interest in maintaining the practical obscurity of rap-sheet information will always be high. When the subject of such a rap sheet is a private citizen and when the information is in the Government's control as a compilation, rather than as a record of 'what the Government is up to,' the privacy interest protected by Exemption 7(C) is in fact at its apex while the FOIA-based public interest in disclosure is at its nadir."].) The information being sought in this bill is not designed for purposes of finding out "what the government is up to" but rather what information the government has compiled.

4) **Policy Considerations**: Of the many practical considerations raised by both the bill's proponents and opposition, one of the primary policy questions is deciding what entities should be able to access, compile, and disseminate criminal history information. Criminal history information is quite compelling in the sense that it could influence employers in hiring decisions, and landlords in granting rental applications, among other things.

Managing these databases is integral to ensuring the information they furnish is accurate and maintained properly. California has recent experience with some of the issues that can arise with databases, namely, CalGang, which was a law enforcement database pertaining to gangs that was overseen by two entities functioning independently from the State. (*The CalGang Criminal System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals' Privacy Rights*. California State Auditor. (2016) <https://www.auditor.ca.gov/reports/search_results> at 1.) The report found that although there were assertions of compliance with federal regulations and state guidelines, there was scant evidence to suggest those standards were met. (*Id.* at 1.) The report found numerous instances where information was either unreliable, inaccurate, and used inappropriately. (*Id.* at 1-2.) As a result, the Legislature transferred management of the database to the DOJ and set policies, procedures, and oversight for the future use of shared gang databases. (See AB 90 (Weber) Chapter 695, Statutes of 2017; Pen. Code, § 186.34 et seq.)

When it comes to consumer reporting agencies, there are several federal and state regulations in place that are designed to ensure reliability and accuracy of background checks. However, there is little oversight of such entities. This could potentially be why there is a growing number of lawsuits against such companies, like Checkr, that make accusations of erroneous background checks costing people chances at employment. (*Locked out of the gig economy: When background checks get it wrong*. Protocol. (2020) <https://www.protocol.com/checkr-gig-economy-lawsuits> [as of Jun. 17, 2022].) The company is said to process approximately 1.5 million background checks every month, however:

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[1] The court in *Hamrick* emphasized that it was not addressing whether allowing such search filters constitutes an impermissible furnishing of criminal history information because the suit was brought against a superior court, which is protected under Civil Code section 3369. (*Id.* at 782.)

> "Since 2015, Checkr has faced some 80 lawsuits under the Fair Credit Reporting Act, which regulates both credit reports and background checks… Roughly half of those suits have been filed in the last year alone. In court documents, the plaintiffs have accused Checkr of a wide range of wrongdoings, from mistaking them with other people to misreporting their offenses to including past criminal activity that is too old to report under the law… These cases, some of which have been dismissed or ended in confidential settlements, represent only a fraction of the complaints about Checkr flooding Twitter and online review sites, like the Better Business Bureau." (*Ibid.*)

Individuals can dispute these errors by accessing Checkr's online portal, but in order to access that portal, the individuals must check a box agreeing to Checkr's terms of service, which includes an arbitration provision. (*Ibid.*) Although arbitration can be beneficial in some ways, it can be detrimental in other ways. "By inserting individual arbitration clauses into a soaring number of consumer and employment contracts, companies like American Express devised a way to circumvent the courts and bar people from joining together in class-action lawsuits, realistically the only tool citizens have to fight illegal or deceitful business practices." (*Arbitration Everywhere, Stacking the Deck of Justice*. The New York Times. (2015) <https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html> [as of Jun. 17, 2022].)

Although this bill only deals with search filters for court indexes, it poses the critical question of how California should approach the availability and accessibility of criminal history information. Should there be a move towards a centralized database available through the DOJ, or should there be decentralization of such information? In either situation there would still likely be a need for greater oversight and accountability.

5) **Argument in Support**: According to *Checkr*, "As a Consumer Reporting Agency ('CRA') regulated under the federal Fair Credit Reporting Act ('FCRA') and California's Investigative Consumer Reporting Agencies Act ('ICRAA'), Checkr conducts background checks for statutorily authorized purposes, including employment, volunteering, and independent contracting. FCRA and ICRAA contain a number of protections for individuals during this process, including limiting the types of information that can be included on a background check; for example, under ICRAA, non-convictions and expunged records cannot be reported, and convictions can only be reported for seven years.

"As part of the background check process for the purposes listed above, an individual provides their written consent to a background check and certain personally identifying information such as name and date of birth ('DOB'). Based on this information, Checkr conducts a search of a court's electronic index to determine whether there are records that should be included in the background report. Prior to May 2021, Checkr could search a court's electronic index by using an individual's name and DOB to determine whether there were any associated records. If no results returned, then the search was complete. If records were returned, then Checkr would conduct a clerk-assisted search to retrieve more information about the record to determine whether the record belonged to the individual at issue and whether the record should be included in the background check. A clerk-assisted search would usually take a few days to complete. Given the ability to conduct searches with unique identifiers such as DOB, searches requiring clerk assistance were limited

(approximately 8%, prior to May 2021)…

"The removal of DOB as a search field has resulted in substantial delays in the background check process for individuals with common names and criminal records. Due to the inability to filter out results by a unique identifier like DOB, the number of searches requiring a clerk-assisted search has nearly doubled from 8% to 14% of all searches. This means that the number of searches requiring clerk assistance has gone from tens of thousands to more than six figures. This has created a substantial backlog for these searches, resulting in these checks taking weeks to months as opposed to a few days prior to May 2021. Not only do these delays impact people with criminal records, but it also affects those with common names. Based on the data in Checkr's system, these delays disproportionately impact individuals with Spanish surnames (see Appendix A, top 50 impacted names of delayed background checks). Looking at searches conducted in Los Angeles County (one of the first courts to remove the ability to search by DOB), Checkr has been averaging more than 20,000 background checks that have been pending for more than 30 days. The most impacted individuals all have Spanish surnames.

"Similarly, searches requiring clerk assistance have effectively reached a standstill in Sacramento County, where DOB was removed as a search parameter a few months ago. There are currently six thousand background checks requiring clerk assistance, most of which are taking two months to complete. At the current rate – and with the growing backlog of searches requiring clerk assistance – processing of these checks has effectively come to a standstill, thereby preventing these individuals from getting to work…"

6) **Argument in Opposition**: According to *Root & Rebound*, "Courts do not collect date of birth information in civil cases; however, they do in criminal cases. (Penal Code, § 11325.) Compiling criminal records with date of birth information helps criminal justice agencies create and share 'accurate and reasonably complete criminal offender record information' with one another 'for the performance of their official duties.' (Penal Code, § 13100.) Aside from criminal justice agencies, only those with a 'compelling need' can access criminal records compiled with the date of birth information. These include schools, nursing homes, licensing boards, and others who can show a 'compelling need' for the information. (Penal Code, §§ 11105, 13300.)

"The constitutional right to privacy restricts access to the criminal information compiled by criminal justice agencies. It prevents 'government and business conduct in . . . misusing information gathered for one purpose in order to serve other purposes' and 'to afford individuals some measure of protection against this most modern threat to personal privacy.' (White v. Davis (1975) 13 Cal.3d 757, 774.)…

"It is clear how commercial reports have come to cost less and become more instant than official DOJ rap sheets. Local courts are allowing commercial background check companies to access the criminal records compiled with the date of birth information for law enforcement purposes. The market for this cheap, instant information has grown exponentially in recent years. The Consumer Financial Protection Bureau (CFPB) cites a 2016 industry survey that approximately 59 percent of employers conduct criminal background checks. The number rose to nearly 90 percent by 2018. Due largely to the increasing demand, fueled by relentless marketing stoking our collective bias against "the felons," the background check industry collected a revenue of $3.2 billion in 2019 alone. A

small piece of the pie goes to courts. For example, the Los Angeles County Superior Court reports that it makes an annual revenue of about $7 million through its website that filters its 'criminal index' by date of birth or driver's license number.

"SB 1262 claims that the delay in commercial background checks caused by the Hamrick ruling 'disproportionately impacts individuals with common names and prevents these individuals from being able to secure work or housing on a timely basis.' However, we have yet to see evidence to support this claim. Instead of being denied work or housing, some formerly incarcerated people report that they are allowed to work or rent on a probationary basis while the background check results are pending.

"On the other hand, we know that the delay is in reducing the background check companies' margins and increasing the cost of a commercial background check. In this era of mass incarceration and collateral consequences, the Court's ruling asks us how much we are willing to pay for our biases against the formerly-incarcerated or convicted people. When a commercial background check costs more and takes longer, we would really have to believe in its utility to buy and use it.

"The Court's ruling disrupts the existing commercial market for criminal history information. The ruling certainly makes it more expensive, although not impossible, to compile a job applicant's criminal history. In response to the aftermath of the ruling, an industry group explains that each report requires "hundreds of criminal case files to be reviewed" manually. Employers with a compelling need can access DOJ rap sheets. Those without must be willing to bear the cost of a manual review process.

"SB 1262 erases the distinction between these two groups. Anyone, with or without a compelling need, would have access to the information compiled for law enforcement purposes. The bill affirms the self-serving argument of commercial background check companies that one's criminal history is always relevant and, therefore, should be made readily available to everyone."

7) **Prior Legislation**:

a) AB 1008 (McCarty), Chapter 789, Statutes of 2017, requires employers to follow certain procedures prior to considering an applicant's criminal history as part of the hiring process.

b) AB 2343 (Torres), Chapter 256, Statutes of 2012, requires that when state or federal summary criminal history information is furnished to an agency, organization or individual, a copy of the information be provided to the person about whom the information relates if there is an adverse employment, licensing, or certification decision.

c) AB 2727 (Bradford), of the 2009-2010 Legislative Session, would have restricted the situations in which an employer could deny an application for employment based on a prior criminal conviction. AB 2727 failed passage in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Financial Services Association
American Staffing Association
Apartment Association of Greater Los Angeles
Asian American Hotel Owners Association
Brea Chamber of Commerce
California Apartment Association
California Association of Licensed Investigators
California Bankers Association
California Builders Alliance
California Building Industry Association
California Cable & Telecommunications Association
California Chamber of Commerce
California Credit Union League
California Financial Services Association
California Hospital Association
California Hotel & Lodging Association
California Restaurant Association
California Retailers Association
Carlsbad Chamber of Commerce
Checkr, INC.
Coalition for Sensible Public Records Access
Consumer Data Industry Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Family Business Association of California
Fountain Valley Chamber of Commerce
Freemont Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mission Viejo Chamber of Commerce
National Credit Reporting Association
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
Nna Services, LLC
Nonprofits Insurance Alliance of California
Official Police Garages of Los Angeles
Professional Background Screening Association
Rancho Cordova Chamber of Commerce
Sacramento Regional Builders Exchange (SRBX)

San Jose Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southern California Rental Housing Association
Sue Weaver CAUSE
Tulare Chamber of Commerce
Valley Industry & Commerce Association
West Ventura County Business Alliance

1 Private Individual

Opposition

A New Way of Life Re-entry Project
A New Way of Life Reentry Project
All of Us or None Los Angeles
California for Safety and Justice
California Native Vote Project
Californians United for A Responsible Budget
Community Legal Services in East Palo Alto
Legal Aid At Work
Legal Services for Prisoners With Children
Los Angeles Regional Reentry Partnership (LARRP)
National Employment Law Project
Oakland Privacy
Privacy Rights Clearinghouse
Root and Rebound
Starting Over, INC.

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

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 1273 (Bradford) – As Amended June 13, 2022

SUMMARY: Removes notification requirements imposed on school personnel to report specified offenses committed by pupils to law enforcement and eliminates criminal penalties for "willful disturbance" during school if committed by a pupil of that school. Specifically, **this bill**:

1) Exempts a pupil currently enrolled in a school from being charged with the misdemeanor offense of causing a willful disturbance at that public school or during a public school meeting.

2) Repeals the provisions of the Education Code related to mandatory reporting of incidents in which a specified school employee is attacked, assaulted, or physically threatened by a pupil.

3) Deletes mandated reporting requirements imposed on certain school employees regarding certain offenses, such as assault and drug sales, that are committed by pupils.

4) Retains the mandated reporting requirements imposed on specified school employees for certain firearm, pocketknife, BB gun, and other weapon related offenses committed by pupils.

5) Deletes immunity from liability arising from the above-described mandated reporting requirements.

EXISTING LAW:

1) Provides that any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor punishable by a fine of not more than $500. (Ed. Code, § 32210.)

2) Requires any employee of a school district or of the office of a county superintendent of schools who is attacked, assaulted, or physically threatened by any pupil to promptly report the incident to the appropriate law enforcement authorities of the county or city in which the incident occurred. Requires the employee's supervisor to report the incident as well. Provides that failure to make the report is an infraction punishable by a fine of $1,000. (Ed. Code, § 44014, subd. (a).)

3) Provides that compliance with school district governing board procedures relating to the reporting of, or facilitation of reporting of, an incident in which an employee is attacked, assaulted, or physically threatened does not exempt a person under a duty to make the report

from making the report. (Ed. Code, § 44014, subd. (b).)

4) Prohibits a specified school employee from directly or indirectly inhibiting or impeding the making of the report by a person under a duty to make the report. Provides that an act to inhibit or impede the making of a report is an infraction punishable by a fine of not less than $500 and not more than $1,000. (Ed. Code, § 44014, subd. (c).)

5) Prohibits a specified school employee from imposing any sanctions against a person under a duty to make the report for making the report. (Ed. Code, § 44014, subd. (d).)

6) Requires the principal of a school, or their designee, to notify law enforcement of a specified act of assault before a pupil is suspended or expelled. (Ed. Code, § 48902, subd. (a).)

7) Requires the principal of a school, or their designee, to notify law enforcement by phone or any other appropriate method of any acts the pupil that may constitute specified offenses related to narcotics and alcohol, within one day of a pupil's expulsion or suspension. (Ed. Code, § 48902, subd. (b).)

8) Requires the principal of a school, or their designee, to notify law enforcement of any acts of a pupil that may involve the possession or sale of controlled substances, possession or discharge of a firearm in a school zone, bringing or possessing upon the grounds of a school specified weapons, sexual assaults, or possession of an explosive. (Ed. Code, § 48902, subd. (c).)

9) Provides that a principal, their designee, or any other person reporting a known or suspected criminal act, as specified, is not civilly or criminally liable as a result of making any report authorized unless it can be proven that a false report was made and that the person knew the report was false or the report was made with reckless disregard for the truth or falsity of the report. (Ed. Code, § 48902, subd. (d).)

10) Requires the principal of a school or their designee reporting a criminal act committed by a schoolage individual with exceptional needs, as defined, to ensure that copies of the special education and disciplinary records of the pupil are transmitted, as described in the federal Individuals with Disabilities Education Act, for consideration by the appropriate authorities to whom he or she reports the criminal act. Provides that any copies of the pupil's special education and disciplinary records may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act. (Ed. Code, § 48902, subd. (e).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1273 will reduce law enforcement involvement in schools and give teachers and administrators, who are often best suited to determine the appropriate response, the flexibility and power they need to support students. Our existing system has led to alarming disparities in the type of students who are most likely to suffer these harms. Black students, Latinx students, students of color, and students with disabilities are disproportionately referred to law enforcement, cited, and arrested. Teachers and administrators will still be able to call law enforcement if they believe that is the right

response to a particular incident, but they will not be required to do so."

2) **Law Enforcement Involvement in Schools and the Effect on Student Outcomes**: The primary concern with law enforcement involvement in school disciplinary efforts is that it leads to greater criminalization of student conduct, which in turn leads to increased involvement in the criminal justice system for those students. This phenomenon has been characterized as the "school-to-prison pipeline" and essentially implies, "a causal path linking school disciplinary practices, particularly those that physically exclude students from school, with student involvement in the juvenile justice and criminal justice systems." (*Making School Safer and/or Escalating Disciplinary Response: A Study of Police Officers in North Carolina Schools*. RAND Corporation. (2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3577645> [as of Jun. 23, 2022] (*RAND: Schools*) at pg. 1.)

   It is difficult to find literature assessing the connection between mandated reporting requirements for school offenses and its possible ramifications. However, there is a great amount of data of School Resource Officers (SROs) and their effects on school campuses. For example, research has found that SROs naturally tend to get involved in school discipline events such as thefts, student altercations, and drug or alcohol possession. (*Id.* at 4.) In instances when SROs view such misconduct through the criminal justice lens rather than as "normative youth development," their involvement can escalate a school disciplinary response, especially if students become upset at the rule enforcement. (*Id.* at 5.) Assessing their study of North Carolina schools and SROs, the RAND Corporation concluded in part that SROs, "reduce serious violent behavior on school grounds, but have no effect – positive, or negative – on weapon, drug, or alcohol offenses." (*Id.* at 29.)

   This bill, in part, would repeal reporting requirements for instances where students committed specified assaults and narcotic or alcohol related offenses, but it would leave reporting requirements for certain weapons related offenses. Most notably, this bill does not prevent school employees from contacting law enforcement but leaves it to their discretion. The primary question then becomes whether teachers and school administrators are equipped with the proper policies and guidelines on when they should determine a matter is more of a "normative youth development" issue, or a problem which necessitates law enforcement involvement.

3) **Argument in Support**: According to the *Association of California School Administrators*, "Decades of research show the long-term harm to young people of even minimal contact with justice systems. Young people arrested in school are less likely to graduate from high school and more likely to wind up incarcerated.1 Alarmingly, Black, Indigenous, and Latinx students, as well as students with disabilities, are disproportionately referred to law enforcement, cited, and arrested.

   "Yet existing law forces school administrators and staff to notify law enforcement of certain types of incidents, even when they know doing so will be harmful and regardless of the particular circumstances of the incident. Under Education Code section 48902, school administrators are required to notify law enforcement even when a student is caught in possession of a small amount of cannabis. Under Education Code section 44014, educators may also be fined for failure to make required reports to law enforcement.

"SB 1273 makes several positive and 21st century changes to existing law. First, it eliminates overreaching state mandates for school notification of law enforcement, thereby encouraging schools to adopt non-punitive, trauma-informed, and health-based approaches to school-related behaviors. By eliminating these mandates, the bill increases educator discretion in determining when to notify law enforcement about a student's school-related behaviors so that they can take into consideration the totality of the circumstances.

"Second, the bill eliminates criminal penalties for school staff who fail to report incidents of alleged assaults or physical threats against school employees.

"Finally, SB 1273 repeals Education Code section 32210, which makes it a misdemeanor for an enrolled students to "willfully disturb" a public school or public school meeting. Section 32210 has been used to criminalize student behavior more appropriately handled through behavioral supports or school discipline. Moreover, this provision is unneeded: other Penal Code provisions exist that may apply if someone is creating a serious disturbance on a school campus."

4) **Argument in Opposition**: According to the *Peace Officers' Research Association*, "PORAC is deeply concerned with SB 1273. This bill presents serious obstacles for our officers seeking to protect and serve the most vulnerable among us, our children. For example, in Section 1 of the bill, a student can willfully disrupt any public school or school board meeting without any consequence. If the behavior occurs on the school site and the site administrator cannot stop the staff or student, law enforcement would be unable to assist until that student batters or threatens another, making the entire school unsafe. This situation will ultimately lead to the school locking down and causing more psychological trauma to the students and staff.

"In addition, Section 2 repeals Education Code §44014 and allows schools to under-report injuries to school employees. It also allows schools and districts to forbid an employee from calling law enforcement when "attacked, assaulted, or physically threatened by a pupil." Not only does this section directly obstruct victims' rights, but it also encourages the hiding and covering up of crimes on school campuses by deleting the consequences of not reporting certain violent acts. Administrators, who may be more concerned about the perception of their school than safety, will be motivated to not properly report crimes.

"Lastly, similar to Section 1, Section 3 amends Education Code §48902 and removes the requirement that a school call law enforcement if a student has committed a CPC §245(a)(1) (Assault with A Deadly Weapon). This language also removes the civil or criminal protection of the caller should they be physically assaulted or suspect that a deadly weapon has been brought onto the school site. Therefore, if a principal, teacher, or any other person calls in a report of a deadly weapon, serious controlled substance, assault, or attack by a student on campus, that individual will have exposed themselves to potential civil and criminal liability. Also, SB 1273 removes the language protecting teachers and other school employees from potential employer discipline, including dismissal, for contacting law enforcement when the employer may have a policy forbidding such action—even if that employee feels their life was in danger.

"There can be no doubt that school safety should be of the utmost priority. Studies have shown that students and teachers returning to school after the pandemic have faced a more

violent environment. We must work together to improve the safety of our children and staff on school campuses. We need communication, collaboration, and accountability between our school administrators and law enforcement more now than ever before. SB 1273 goes in the opposite direction."

5) **Related Legislation**:

a) SB 906 (Portantino) would require school authorities to notify law enforcement if they believe a pupil may commit a homicidal act and requires schools to send letters to parents that outline information related to the safe storage of firearms. SB 906 is pending hearing on the Assembly floor.

b) AB 610 (Kalra) would eliminate criminal penalties for "willful disturbance" of a school or school meeting and aligns disciplinary notification requirements with the federal Gun-Free Schools Act. AB 610 was held in the Assembly Education Committee.

6) **Prior Legislation**:

a) SB 419 (Skinner) Chapter 279, Statutes of 2019, extended the prohibition against suspending a pupil enrolled in kindergarten or any of grades 1 to 3 for disrupting school activities or otherwise willfully defying the valid authority of school staff to include grades 4 to 8 permanently, and grades 9 to 12 until January 1, 2025, and applies these prohibitions to charter schools.

b) AB 420 (Dickerson) Chapter 660, Statutes of 2014, eliminated the option to suspend or recommend for expulsion a pupil who disrupted school activities or otherwise willfully defied the authority of school officials and instead authorizes schools to suspend a pupil in grades 6-12 who has substantially disrupted school activities or substantially prevented instruction from occurring.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Co-Sponsor)
Alliance for Boys and Men of Color (Co-Sponsor)
Advancement Project
Alliance for Children's Rights
Alliance San Diego
Anti-defamation League
Arts for Healing and Justice Network
Association of California School Administrators
Black Organizing Project
Black Parallel School Board
Brothers, Sons, Selves Coalition
Brown Issues
California Association of School Counselors
California Coalition for Women Prisoners
California Public Defenders Association

California Rural Legal Assistance Foundation, INC.
California School-based Health Alliance
Californians for Justice
Californians for Safety and Justice
Child Care Law Center
Children Now
Children's Defense Fund - CA
Children's Defense Fund-california
Coleman Advocates for Children & Youth
Communities United for Restorative Youth Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Asset Development Redefining Education
Community Coalition for Substance Abuse Prevention and Treatment
Congregations Organized for Prophetic Engagement
Corazon Healdsburg
Courage California
Democrats of Rossmoor
Disability Rights California
Dolores Huerta Foundation
Drug Policy Alliance
East Bay Community Law Center
Educators for Excellence - Los Angeles
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners
Equal Justice Society
Fresno Barrios Unidos
Friends Committee on Legislation of California
Genders & Sexualities Alliance Network
Generation Up
Gente Organizada
Genup (generation Up)
Great Public Schools Now
H.e.r.o. Tent
Improve Your Tomorrow, INC.
Initiate Justice
Inland Empire United, a Project of Tides Advocacy
John Burton Advocates for Youth
Juvenile Justice & Delinquency Prevention Commission of Marin County
Law Foundation of Silicon Valley
Lawyers Committee for Civil Rights of The San Francisco Bay Area
Lawyers Committee for Civil Rights of The San Francisco Bay Area
Loud for Tomorrow
Mid-city Community Advocacy Network
Motivating Individual Leadership for Public Advancement
National Center for Youth Law
National Institute for Criminal Justice Reform
Pacific Juvenile Defender Center
Parent Organization Network

Pittsburg Youth Action
Project Knucklehead
Public Advocates
Public Advocates INC.
Public Counsel
Riverside County Public Defender's Office
San Jose Unified Equity Coalition
Showing Up for Racial Justice- Marin
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Social Justice Learning Institute
Starting Over, INC.
Students Deserve
Surj Marin - Showing Up for Racial Justice
The Children's Partnership
The Collective for Liberatory Lawyering
The Democrats of Rossmoor
The Gathering for Justice
The Los Angeles Trust for Children's Health
Trauma Informed Los Angeles
United Teachers Los Angeles
Youth Alive!
Youth Alliance
Youth Justice Education Clinic, Center for Juvenile Law and Policy, Loyola Law School
Youth Justice Education Clinic, Loyola Law School
Youth Law Center

1 Private Individual

Opposition

Administrators Association of San Diego City Schools
Arcadia Police Officers Association
Association for Los Angeles Deputy Sheriffs
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Police Chiefs Association
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 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 Officer Association
Riverside Police Officers Association

Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Santa Ana Police Officers Political Action Committee
Upland Police Officers Association

1 Private Individual

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

Date of Hearing: June 28, 2022
Counsel: Cheryl Anderson

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

SB 1081 (Rubio) – As Amended May 19, 2022

As Proposed to be Amended in Committee

SUMMARY: Expands the existing crime of unlawful distribution of a private image, also known as "revenge porn." Specifically, **this bill**:

1) Clarifies that "intentionally causes an image to be distributed" means "when that person arranges, specifically requests, or intentionally causes another person to distribute the image."

2) Defines "distribute" to include "exhibiting in public or giving possession."

3) Defines "identifiable," as "capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established."

4) Exempts the distribution of an image that is related to a matter of public concern or public interest, but clarifies that a distributed image is not a matter of public interest or public concern solely because it depicts a public figure.

EXISTING LAW:

1) Makes it a misdemeanor for a person to intentionally distribute an image of the intimate body parts of another identifiable person, or of the person depicted engaged in a sex act, under circumstances in which the persons agreed or understood that the image would remain private, and the person distributing the image knows or should know that the distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. This crime is also commonly known as "revenge porn." (Pen. Code, § 647, subd. (j)(4)(A).)

2) Provides that distribution of the image is not a violation of the law if:

   a) The distribution is made in the course of reporting an unlawful activity;

   b) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding; or,

   c) The distribution is made in the course of a lawful public proceeding. (Pen. Code, § 647, subd. (j)(4)(D).)

3) Defines "intimate body part" to mean "any portion of the genitals, the anus and, in the case of a female, also includes any portion of the breasts below the top of the areola, that is either

uncovered or clearly visible through clothing." (Pen. Code, § 647, subd. (j)(4)(C).)

4) States that a person intentionally distributes an image when that person personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image. (Pen. Code, § 647, subd. (j)(4)(B).)

5) Provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of child pornography and shall be punished by either by imprisonment in the county jail for up to one year, by a fine not exceeding $1,000, or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 311.1.)

6) Provides that every person who knowingly possesses or controls any matter, representation of information, data, or image, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding $2,500, or by both the fine and imprisonment. (Pen. Code, § 311.11.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Unfortunately, under existing law, the crime of revenge porn can only be prosecuted when a person intentionally "distributes" a private image of the intimate body part without consent. Unfortunately, the term "distributes" limits situations where an individual may conduct this type of unlawful activity, such as displaying the private image for public consumption. It happened in Shasta County for example, where a perpetrator had naked images of the victims' body on his vehicle and drove it around town, violating that victims' privacy. The trauma she suffered was equally devastating. California is one of 46 states to have these protections in place, prohibiting this type of conduct. We must ensure victims are protected under revenge porn statute, even if the images were simply displayed."

2) **Background: "Revenge Porn":** Sending or posting sexually explicit photographs or videos of another person without their permission even if they were taken with their consent is known as nonconsensual pornography or "revenge porn." (National Conference of State Legislatures, Trends in State Policy News (May 1, 2017) https://www.ncsl.org/bookstore/state-legislatures-magazine/trends-in-state-policy-news.aspx [as of June 21, 2022].)

   California has specifically criminalized "revenge porn." (Pen. Code, § 647, subd. (j)(4)(A).) In 2013, the Legislature passed SB 255 (Canella), Chapter 466, which created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts

which had been taken with an understanding that the image would remain private. Specifically, the crime required: (1) that defendant be the person who takes the photograph; (2) that the parties had an agreement or understanding that the image would remain private; (3) that the distribution was made with the intent to cause serious emotional distress, and, (4) that the person depicted does in fact suffer serious emotional distress. In 2014, the Legislature passed SB 1255 (Cannella), Chapter 863 which deleted the requirement that the defendant be the one who photographed or recorded the image, so that the crime applies regardless of who photographed or recorded the image. In addition, SB 1255 deleted the requirement that the defendant intended to cause serious emotional distress. Instead, it required that the defendant know, or should have known, that distribution of the image would cause serious emotional distress. As a result, SB 1255 deleted the specific intent requirement. Nonetheless, the current version of the statute contains the mental state requirement of knowledge.

California also has a civil remedy. In 2014, the Legislature enacted AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, creating a private right of action against a person who intentionally distributes a sexually explicit photograph or other image or recording of another person, without the consent of that person. (Civ. Code, § 1708.85.) In cases where the person depicted has not suffered serious emotional harm, they can nonetheless get an injunction to stop distribution of the image. (Civ. Code, § 1708.85, subd. (d).)

This bill would define distribute as including exhibiting in public or giving possession. By including exhibition in public, in addition to giving possession, it expands the scope of the offense of revenge porn. It would also make the criminal offense inapplicable where the distribution is related to a matter of public concern or public interest.

3) **First Amendment**: The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." (U.S. Const, Amend. I, Section 1.) The California Constitution also protects free speech. "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const. Art. I, § 2.) "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as "exacting scrutiny" in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

Nevertheless, the protections of the First Amendment are not absolute. Restrictions on the content of speech have been long been permitted in a few limited areas including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. (*United States v. Stevens* (2010) 559 U.S. 460, 130 S.Ct. 1577, 1584 [citations omitted].) The First Amendment permits "restrictions upon the content of speech in a few limited areas which are 'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the societal interest in order and morality.'" (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383.)

While some lower courts have grappled with First Amendment challenges to state "revenge porn" laws generally, the California Supreme Court has yet to weigh in. (Paul, *Is Revenge Porn Protected Speech? Lawyers Weigh in, and Hope for a Supreme Court Ruling*, The Washington Post (Dec. 26, 2019) < https://www.washingtonpost.com/nation/2019/12/26/is-revenge-porn-protected-speech-supreme-court-may-soon-weigh/> [as of June 20, 2022].)

A former version of California's "revenge porn" law (Pen. Code, § 647, subd. (j)(4)(iii)) survived First Amendment scrutiny in *People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1 (*Iniguez*). There, the defendant argued the statute was overbroad, violating free speech. Under the overbreadth doctrine, a defendant "may challenge a statute not because their own rights of free expression are violated, but because the very existence of an overbroad statute may cause others not before the court to refrain from constitutionally protected expression. [Citations.]" (*In re M.S.* (1995) 10 Cal.4th 698, 709.) To avoid being overbroad, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612 [citations omitted].)

Assuming, without deciding a person has a free speech right to distribute such images, the *Iniguez* court concluded former subdivision (j)(4)(iii) of Penal Code section 647.6 was not constitutionally overbroad because its requirement that a person intend to cause distress served to narrow the law. (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at pp. 7-8.) The court noted this rendered the law inapplicable should a person act under a mistake of fact or by accident. (*Id.* at pp. 7-8.)

The *Iniguez* court also explained that "it is not just *any* images that are subject to the statute, but only those which were taken under circumstances where the parties agreed or understood the images were to remain private. The government has an important interest in protecting the substantial privacy interests of individuals from being invaded in an intolerable manner." (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at p. 8 [citation omitted].) The court stated, "It is evident that barring persons from intentionally causing others serious emotional distress through the distribution of photos of their intimate body parts is a compelling need of society." (*Ibid.*)

Though as noted above, SB 1255 deleted the specific intent requirement, California's current version of the statute contains a mental state requirement of knowledge. This bill would not further alter the knowledge element or the requirement that the images were taken under circumstances where the parties agreed or understood the images were to remain private, as discussed in *Iniguez*. As discussed below, the bill would expand the offense of revenge porn by redefining the term distribution to include exhibiting the image in public, in addition to giving possession.

4) **The Term "Distributes":** In *Iniguez, supra*, 247 Cal.App.4th Supp. at. pp. 10-11, the defendant also argued insufficient evidence supported his conviction because he had failed to "distribute" the photo by posting it on Facebook. The court concluded, however, "there is no indication in section 647, subdivision (j)(4), that the term "distribute[s]" was intended to have a technical legal meaning, or to mean anything other than its commonly used and known definition of "to give or deliver (something) to people." (Merriam-Webster Dict. Online <http://www.merriam-webster.com/dictionary/distribute> [as of Mar. 25, 2016].)"

(*Id.* at p. 10.) The court further noted, "Legislative analyses of the Senate bill that enacted section 647, subdivision (j)(4), are replete with indications that posting images on public Web sites was precisely one of the evils the statute sought to remedy." (*Ibid.*)

The term distribute as commonly understood would not necessarily include other activities like exhibiting the images in a public place. This bill would define "distribution" to include exhibiting in public, in addition to giving possession. In doing so, it expands the scope of the criminal offense.

5) **Matter of Public Concern**: "[N]ot all speech is of equal First Amendment importance, however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous. That is because restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest: [T]here is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas; and the threat of liability does not pose the risk of "a reaction of self-censorship" on matters of public import." (*Snyder v. Phelps* (2011) 562 U.S. 443, 452 [citations and quotations omitted].) "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public, …." (*Id.* at p. 453 [citations and quotations omitted].)

   This bill would make the criminal offense inapplicable where the distribution is related to a matter of public concern or public interest. It is unclear under what circumstances this exception would apply. (See *People v. Austin* (2019) 155 N.E.3d 439 ["we have no difficulty in concluding that the nonconsensual dissemination of the victim's private sexual images was not an issue of public concern"].)

6) **Argument in Support**: According to the *California District Attorneys Association*, the sponsor of this bill, "California led the nation in 2013 when it created the crime of revenge porn. Data shows that this form of 'cyber revenge' is an invasive and increasingly common crime intended to shame and intimidate its victims, and the significant emotional distress it causes them can have severe consequences.

   "Under existing law, the crime of revenge porn is limited to "distribution" of pornographic images. One specific case, where an ex-boyfriend pasted enlarged naked pictures of his ex girlfriend on the side of his truck and drove all around town, did not meet the current statutory definition. This bill would fix that problem so that the offending truck driving ex-boyfriend could be prosecuted."

7) **Argument in Opposition**: According to the *Pacific Juvenile Defender Center*, "Without question, the kind of conduct SB 1081seeks to deter and punish is most often engaged in by youth. As the Legislature already knows, as outlined above, youth, including young adults under the age of 26, are impetuous, irrational and susceptible to peer pressure. SB 1081 will not deter youth from sending unsolicited sexual content. The Legislature should invest in state mandated programs in communities and schools, designed to *effectively* deter youth from distributing intimate images."

8) **Prior Legislation**:

a) AB 307 (Lackey), of the 2021-2022 Legislative Session, would have expanded the scope of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts and makes it a registerable sex offense. Hearing on AB 307 was canceled in this committee at the request of the author.

b) AB 2065 (Lackey), of the 2019-2020 Legislative Session, would have made the distribution of an intimate image of another person a felony offense punishable in state prison and requiring registration as a sex offender, and would have created new and separate misdemeanor crimes prohibiting the distribution and threatened distribution of such images. AB 2065 was not heard in this committee.

c) AB 602 (Berman), Chapter 491, Statutes of 2019, created a private right of action for a "depicted individual" against a person who either creates or intentionally discloses sexually explicit material without the consent of the depicted person.

d) AB 730 (Berman), Chapter 493, Statutes of 2019, prohibited the distribution of materially deceptive audio or visual media with actual malice with the intent to injure a candidate's reputation or to deceive a voter into voting for or against a candidate, unless the materially deceptive audio or visual media includes a disclosure that it has been manipulated.

e) AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, created a private right of action against a person who intentionally or recklessly distributes a sexually explicit photograph or other image or recording of another person, without the consent of that person.

f) SB 1255 (Cannella), Chapter 863, Statutes of 2014, expands the elements of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts.

g) SB 255 (Cannella), Chapter 466, Statutes of 2013, created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private.

h) AB 321 (Hernández), of the 2011-2012 Legislative Session, would have required additional penalties be imposed on a minor adjudicated of "sexting." AB 321 was held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
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 Professional Peace Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officer Association
Prosecutors Alliance of California
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Political Action Committee
Upland Police Officers Association

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
Pacific Juvenile Defender Center

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

Amended Mock-up for 2021-2022 SB-1081 (Rubio (S))

Mock-up based on Version Number 97 - Amended Senate 5/19/22
Submitted by: Cheryl Anderson, Assembly Public Safety

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

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Except as provided in paragraph (5) of subdivision (b) and subdivision (k), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) An individual who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) (1) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(3) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in

this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that they are unable to exercise care for their own safety or the safety of others, or by reason of being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) If a person has violated subdivision (f), a peace officer, if reasonably able to do so, shall place the person, or cause the person to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force authorized to effect an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision does not apply to the following persons:

(1) A person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) A person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

(3) A person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) (1) A person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, mobile phone, electronic device, or unmanned aircraft system, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision does not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. For the purposes of this paragraph, "identifiable" means capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established.

(3) (A) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. For the purposes of this paragraph, "identifiable" means capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established.

(B) Neither of the following is a defense to the crime specified in this paragraph:

(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.

(ii) The victim was not in a state of full or partial undress.

(4) (A) A person who intentionally distributes or causes to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

(B) (i) A person intentionally distributes an image described in subparagraph (A) when that person personally distributes the image.

(ii) A person intentionally causes an image described in subparagraph (A) to be distributed when that person arranges, specifically requests, or intentionally causes another person to distribute the image.

(C) As used in this paragraph, the following terms have the following meanings:

(i) "Distribute" ~~or "distribution"~~ includes ~~dissemination, presentation, display, exhibition~~ exhibiting in public or giving possession." ~~, or otherwise sharing with a third party or the public.~~

(ii) "Identifiable" has the same meaning as in paragraphs (2) and (3).

(iii) "Intimate body part" means any portion of the genitals, the anus and, in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing.

(D) It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:

(i) The distribution is made in the course of reporting an unlawful activity.

(ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding.

(iii) The distribution is made in the course of a lawful public proceeding.

(iv) The distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

(5) This subdivision does not preclude punishment under any section of law providing for greater punishment.

(k) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(l) (1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment.

(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.

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

Date of Hearing: June 28, 2022
Counsel: Liah Burnley

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

SB 1087 (Gonzalez) – As Amended June 23, 2022

SUMMARY: Prohibits a person from purchasing a used catalytic converter except from certain specified sellers. Specifically, **this bill**:

1) Prohibits a person from purchasing a used catalytic converter, including for the purpose of dismantling, recycling, or smelting, except from any of the following sellers:

   a) A licensed automobile dismantler;

   b) A core recycler that maintains a fixed place of business;

   c) A motor vehicle manufacturer;

   d) A motor vehicle dealer;

   e) A licensed motor vehicle lessor-retailer;

   f) A licensed automotive repair dealer;

   g) Any other licensed business that may reasonably generate, possess, or sell used catalytic converters; and,

   h) An individual possessing documentation that they are the lawful owner of the used catalytic converter. Documentation for this purpose, includes, but is not limited to, a certificate of title or registration identifying the person as the legal or registered owner of the vehicle and the VIN of the vehicle that matches the VIN-permanently marked on the catalytic converter.

2) Provides that a violation of the above prohibition is an infraction, punishable by a fine of $1,000 for the first offense, $2,000 for the second offense, and $4,000 for a third or subsequent offense.

3) Defines "permanently marked" as prominently engraved, etched, or written in permanent ink on the exterior case of the catalytic converter.

4) Defines "used catalytic converter" as a catalytic converter that has been previously installed on a vehicle and has been detached. It does not include a reconditioned or refurbished catalytic converter being sold at retail.

5) Provides that a core recycler may not provide payment for a catalytic converter, unless the seller is any of the following:

   a) A licensed automobile dismantler;

   b) A core recycler that maintains a fixed place of business;

   c) A motor vehicle manufacturer;

   d) A motor vehicle dealer;

   e) A licensed motor vehicle lessor-retailer;

   f) A licensed automotive repair dealer;

   g) Any other licensed business that may reasonably generate, possess, or sell used catalytic converters; and,

   h) An individual possessing documentation that they are the lawful owner of the used catalytic converter. Documentation for this purpose, includes, but is not limited to, a certificate of title or registration identifying the person as the legal or registered owner of the vehicle and the VIN of the vehicle that matches the VIN-permanently marked on the catalytic converter.

EXISTING LAW:

1) Defines a "core recycler" as a person or business that buys used individual catalytic converters or other parts previously removed from a vehicle, and specifies that a person or business that buys a vehicle that contains these parts is not a core recycler. (Bus. & Prof. Code, § 21610, subd. (a).)

2) Requires a core recycler who accepts a catalytic converter for recycling to maintain a written record that contains all of the following:

   a) The place and date of each sale or purchase of a catalytic converter made in the conduct of his or her business as a core recycler;

   b) The name, valid driver's license number, and state of issue, or California-issued identification number, of the seller of the catalytic converter and the vehicle license number, including state of issue of a motor vehicle used in transporting the catalytic converter to the core recycler's place of business. If the seller is a business, the written record shall include the name, address, and telephone number of the business;

   c) A description of the catalytic converters purchased or sold, including the item type and quantity, amount paid for the catalytic converter, and identification number, if any, and the vehicle identification number; and,

   d) A statement indicating either that the seller of the catalytic converter is the owner of the catalytic converter, or the name of the person from whom he or she has obtained the

catalytic converter, including the business, if applicable, as shown on a signed transfer document. (Bus. & Prof. Code, § 21610, subd. (b).)

2) States that a core recycler engaged in the selling or shipping of used catalytic converters to other recyclers shall retain information on the sale that includes all of the following:

   a) The name and address of each person to whom the catalytic converter is sold or disposed of;

   b) The quantity of catalytic converters being sold or shipped;

   c) The amount that was paid for the catalytic converters sold in the transaction; and,

   d) The date of the transaction. (Bus. & Prof. Code, § 21610, subd. (c).)

3) States that a core recycler shall not pay for a catalytic converter unless specified requirements are met at the time of sale, including that the core recycler obtains a clear photograph or video of the seller, a copy of the valid driver's license of the seller or federal government issued identification card containing a photograph and an address of the seller, a clear photograph or video of the catalytic converter being sold, and a written statement from the seller indicating how the seller obtained the catalytic converter. (Bus. & Prof. Code, § 21610, subd. (d).)

4) Requires a core recycler to keep and maintain the information for not less than two years and to make that information available for inspection by local law enforcement upon demand. (Bus. & Prof. Code, § 21610, subds. (g) & (h).)

5) Provides that a person who makes a false or fictitious statement regarding any of the required information or who violates any of the requirements is guilty of a misdemeanor, punishable up to six months in county jail and by a fine of $1,000 for a first conviction; a fine of not less $2,000 for a second conviction; and, a fine of not less than $4,000 for a third and subsequent conviction. (Bus. & Prof. Code, § 21610, subds. (i)- (k).)

6) Provides that it unlawful for any person to act as an automobile dismantler without first having an established place of business, as defined, and having procured a license issued by the Department of Motor Vehicles (DMV). (Veh. Code, § 11500, et seq.)

7) States that no person shall act as a dealer or manufacturer, as specified, without having first been issued a license by the DMV. (Veh. Code, § 11700, et seq.)

8) Provides that it is unlawful for any lessor-retailer to make a retail sale of a vehicle subject to registration without having first procured either a vehicle dealer license or a lessor-retailer license by the DMV. (Veh. Code, § 11600, et seq.)

9) Requires automotive repair dealers to be licensed by the Bureau of Automotive Repair (BAR), as specified. (Bus. & Prof. Code, § 9880, et seq.)

10) Provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, a required motor vehicle pollution control

device or system, including catalytic converters, that alters or modifies the original design or performance of the motor vehicle pollution control device or system. If the court finds that a person has willfully violated this section, the court shall impose the maximum fine that may be imposed in the case, and no part of the fine may be suspended. (Veh. Code, §§ 27156, subds. (c)-(d); 38391.)

11) States that no person shall either individually, or in association with one or more other persons, willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10852 & 42004; Pen. Code, § 19.)

12) States that no person shall with intent to commit any malicious mischief, injury, or other crime, climb into or upon a vehicle whether it is in motion or at rest, nor shall any person attempt to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended, nor shall any person set in motion any vehicle while the same is at rest and unattended. This offense is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Veh. Code, §§ 10853 & 42002; Pen. Code, § 19.)

13) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

14) Provides that "receiving stolen property" is buying or receiving any property that has been stolen knowing the property is stolen, or concealing, selling, or withholding any property from the owner, knowing the property is stolen. Receiving stolen property that does not exceed $950 is a misdemeanor, as specified, and receiving stolen property that exceeds $950 is a wobbler. (Pen. Code, § 496, subds. (a) & (d).)

15) Provides that "grand theft" is theft that is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified, and states that grand theft is a wobbler. (Pen. Code, §§ 487, 488, 489, subd. (c).)

16) Provides that "petty theft" is obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and states that petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, §§ 490, 490.2 subd. (a).)

EXISTING FEDERAL LAW: Prohibits buying, receiving, possessing, or obtaining control of a car part, with the intent to sell or otherwise dispose of it, if the person knows that the identification number was removed, obliterated, tampered with, or altered. A person who violates this section shall be fined or imprisoned for not more than ten years, or both. (18 U.S.C. § 2321.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Californians have been largely affected by the rise of catalytic converter theft. These thefts have more than tripled since the initial stay-at-home orders due to the COVID-19 pandemic based on reports by the National Insurance Crime Bureau. Catalytic converters have become a precious possession due to their highly valuable metals, like palladium and rhodium. Individuals looking to make a quick buck can make hundreds of dollars selling them to auto parts suppliers or scrapyards.

   "Victims of catalytic converter theft are left with the cost of replacing their catalytic converter, which can run over $2,000. This has become economically challenging for many Californians but especially for low-income individuals who rely on only one car for their whole family.

   "SB 1087 will address catalytic converter theft by prohibiting the purchase of detached catalytic converters unless it is purchased from the owner of the vehicle the catalytic converter was removed from, or from an automobile manufacturer, dealer, dismantler, auto repair specialist, or any other business that generates, possess, or sells used catalytic converters. The bill would make a violation of this law and infraction punishable with a fine between $1,000-4,000.

   "Furthermore, SB 1087 would prohibit a core recycler from purchasing a catalytic converter from anyone other than automobile dismantlers, auto repair dealers, or an individual possessing documentation that they are the lawful owner of the catalytic converter. This measure takes a preventing approach by creating a barrier for people selling detached catalytic converters in the black market."

2) **Catalytic Converter Theft**: According to a 2021 report by the Congressional Research Service:

   > Thefts of catalytic converters, a key part of the emission control systems of internal combustion vehicles, are on the rise. The devices, which are installed not only on passenger vehicles but also on buses, motorcycles, and commercial trucks, use valuable metals to reduce pollutants emanating from the engine. Replacing a stolen catalytic converter can cost a passenger vehicle owner up to $3,000. [...]
   >
   > Catalytic converters, the sale of which may net thieves $25 to $500 depending on the type and model of vehicle they were attached to, have become targets for theft for several reasons. During the pandemic, many cars and fleet vehicles remained parked in the same spot for extended periods since people were not driving as much due to pandemic restrictions. These vehicles might be attractive targets for thieves because people were not paying attention to them and because the value of the precious metals they contain has risen sharply. [...]
   >
   > Identifying stolen vehicle parts has been facilitated by the National Motor Vehicle Title Information System, established by federal law in 1992 (P.L. 102-519) to keep stolen vehicles from being resold.

> Administered by the American Association of Motor Vehicle Administrators, it requires regular reporting by scrap recyclers and salvage yards. Harnessing the cooperation of these businesses could lead to a decline in catalytic converter thefts if additional documentation were to be required before converters are purchased. [...]
>
> California has some of the most stringent standards regarding the sale of catalytic converters to scrap recyclers. [...] Thus far, CRS has not located evidence about the effectiveness of California's standards in reducing converter theft.

(*Addressing Catalytic Converter Theft*, Congressional Research Service. (July 6, 2021) <https://crsreports.congress.gov/product/pdf/IF/IF11870/2>.)

3) **Core Recyclers**: A core recycler is any person or business that buys used individual catalytic converters, transmissions, or other parts previously removed from a vehicle. (Bus. & Prof. Code, § 21610.) Existing law sets various requirements for requires core recyclers who accept catalytic converters for recycling. (*Ibid.*) Any person who violates any of the requirements is guilty of a misdemeanor, punishable by a up to six months in jail and a fine of up to $4,000 for subsequent convictions. (Bus. & Prof. Code, § 21610, subd. (k).)

   In addition to the existing requirements, this bill would further require core recyclers to purchase catalytic converters exclusively from automobile dismantlers, core recyclers, motor vehicle manufactures, dealers, retailers and lessors, automotive repair dealers, any other licensed business that may reasonably generate, possess or sell used catalytic converters, and individuals possessing documentation that they are the lawful owner of a used catalytic converter.

4) **This Bill Would Create a New Infraction**: In addition to specifying from whom a core recycler can purchase a catalytic converter, this bill would also specify from whom any person can purchase used catalytic converter and makes it an infraction to violate this provision. Specifically, a person can only purchase a used catalytic converter from automobile dismantlers, core recyclers, motor vehicle manufactures, dealers, retailers and lessors, automotive repair dealers, any other licensed business that may reasonably generate, possess or sell used catalytic converters, and individuals possessing documentation that they are the lawful owner of a used catalytic converter. This prohibition is only applicable to "used" catalytic converters, which is defined as a catalytic converter that has been previously installed on a vehicle and has been detached—it does not include refurbished converters being sold at retail. Purchasing a used catalytic converter from any other person or entity would be an infraction punishable by a fine of up to $4,000.

   The proposed committee amendments make minor technical changes that clarify the author's intent if a used catalytic converters is purchased from an individual, the individual must possess documentation that they are the lawful owner of the used catalytic converter. One form of documentation for this purpose, *may include, but is not limited to*, a certificate of title or registration identifying the VIN of the vehicle that matches the VIN permanently marked on the catalytic converter. Currently, catalytic converters are not required to be permanently marked with VIN numbers. Therefore, individuals seeking to sell their catalytic converters to recyclers may be required to spend time and money to get their converter marked with a VIN

prior to the sell, or obtain other documentation to demonstrate that they are the lawful owner. Thus, this bill could have the unintended consequence of deterring lawful owners of used catalytic converters from dismantling, recycling, or smelting used catalytic converters.

5) **AB 1740 (Muratsuchi)**: AB 1740 (Muratsuchi), which was not referred to this Committee, would require a core recycler to maintain a written record of the year, make, and model of the vehicle from which the catalytic converter was removed. AB 1740 also exempts core recyclers from specified requirements provided that they hold a written agreement with a business regarding the transactions and the written agreement includes a log of all that describes each catalytic converter received with sufficient particularity including any identification numbers or marking. AB 1740 prohibits core recyclers from purchasing catalytic converters from specified persons, and requires when a core recycler purchases or receives a converter from the owner of the vehicle from which it was removed to verify that the converter is permanently marked with a VIN number matching the owner's vehicle.

   AB 1740 is similar to this bill, as both bills prohibit core recyclers from purchasing catalytic converters from a person who is not an automobile dismantler, core recycler, motor vehicle manufacturer, dealer, retailers, automotive repair dealer, licensed business that may sell used catalytic converters, and a person who is a verifiable owner of the vehicle from which the catalytic converter was removed. However, unlike AB 1740, this bill does not *require* core recyclers to only accept converters that are marked with a VIN matching the VIN of the vehicle from which it was removed. Rather, as discussed above, this bill would provide any person and core recyclers can only purchase used catalytic converters from individuals if the individual has documentation that they are the lawful owner of the converter. "Documentation," *may include, but is not limited to*, a certificate of title or registration identifying the VIN of the vehicle that matches the VIN marked on the catalytic converter.

6) **Arguments in Support**:

   a) According to the *Auto Club of Southern California and AAA Northern California, Nevada, and Utah* (AAA), "In 2009, SB 627 (Calderon) was passed, placing in law the requirement that core recyclers comply with certain recordkeeping and identification procedures and payment restrictions when purchasing catalytic converters. SB 627 sought to discourage thieves by placing several restrictions and requirements on recyclers who accept catalytic converters for recycling purposes. SB 1087 takes this a step further by ensuring a closed system for the sale and purchase of a catalytic converter. While SB 627 had focused on those purchasing the catalytic converters, SB 1087 focuses on the sellers. SB 1087 states that only certain specified individuals or entities can be the seller of a catalytic converter and that core recyclers may only purchase catalytic converters from those specified individuals or entities. By closing this system for the sale and purchase of catalytic converters, SB 1087 will assist in deterring their theft; thus, we respectfully urge your support of this bill."

   b) According to the *California District Attorneys Association* (CDAA), "By requiring core recyclers to maintain an updated log describing each catalytic converter that it purchased pursuant to a written agreement and by narrowing the scope of people core recyclers are permitted to purchase catalytic converters from, this bill provides law enforcement and prosecutors with important tools that are necessary to discourage and prevent the growing

crime of catalytic converter theft."

7) **Related Legislation:**

a) AB 1622 (Chen), would have required the Department of Consumer affairs to provide a licensed smog check station with a sign informing customers about strategies for deterring catalytic converter theft, including the etching of identifying information on the catalytic converter. AB 1622 was never heard by Assembly Transportation Committee.

b) AB 1659 (Patterson), would have revised the definition of an automobile dismantler to include a person who keeps or maintains two or more used catalytic converters that are not attached to a motor vehicle on property owned by the person, or under their possession or control, for specified purposes. AB 1659 was never heard by Assembly Transportation Committee.

c) AB 1740 (Muratsuchi), would require a core recycler to maintain a written record of the year, make, and model of the vehicle from which the catalytic converter was removed. AB 1740 is pending in Senate Appropriations Committee.

d) AB 1984 (Choi), would have prohibited the purchase, sale, receipt, or possession of a stolen catalytic converter, and specifies that a peace officer need not have actual knowledge that the catalytic converter is stolen to establish probable cause for arrest, and that in a prosecution of the section, circumstantial evidence may be used to prove the stolen nature of the catalytic converter. AB 1984 was never heard by Assembly Transportation Committee.

e) AB 2398 (Villapudua), would have created a new crime of possession of five or more detached catalytic converters. AB 2398 failed passage in this Committee.

f) AB 2407 (O'Donnell), would require a core recycler to request to receive theft alert notifications regarding the theft of catalytic converters from a specified theft alert system. AB 2407 is pending in Senate Business, Professions and Economic Development Committee.

g) AB 2682 (Gray), would prohibit a dealer or retail seller from selling a motor vehicle equipped with a catalytic converter unless the catalytic converter has been engraved, etched, or otherwise permanently marked with the VIN of the vehicle to which it is attached. AB 2682 is pending in Senate Business, Professions and Economic Development Committee.

h) SB 919 (Jones), is substantial similar as AB 1984 (Choi). SB 919 failed passage in Senate Public Safety Committee.

i) SB 986 (Umberg), would prohibit a dealer or retail seller from selling a vehicle equipped with a catalytic converter unless the catalytic converter has been permanently marked with the VIN of the vehicle to which it is attached. SB 986 will be heard by this Committee today.

j) H.R. 6394 (Baird), of the 117th Congress, 2021-2022, the *Preventing Auto Recycling Theft Act*, would require the National Highway Traffic Safety Administration to revise the motor vehicle theft prevention standards which require VIN numbers to be affixed or inscribed on parts present on the vehicle to include catalytic converters. H.R. 6394 would also establish a grant program for law enforcement agencies and automobiles to stamp VIN numbers on catalytic converters. H.R. 6394 is pending in the House Subcommittee on Highways and Transit.

8) **Prior Legislation**:

a) SB 627 (Calderon), Chapter 603, Statues of 2009, requires core recyclers, as defined, to comply with additional recordkeeping and identification procedures and new payment restrictions when purchasing catalytic converters.

b) SB 366 (Umberg), Chapter 601, Statutes of 2021, reconstituted the Vehicle Dismantling Industry Strike Team, which amongst other things, requires a study the number of unlicensed automobile dismantlers investigated and the number of investigations that resulted in an enforcement action for the theft of catalytic converters.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Automotive Innovation
Auto Club of Southern California (AAA)
California Association of Highway Patrolmen
California District Attorneys Association
California New Car Dealers Association
California Police Chiefs Association
California Vanpool Authority
City of Paramount
City of Rancho Palos Verdes
Lakewood; City of
League of California Cities

Opposition

None Submitted

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

Date of Hearing: June 28, 2022
Counsel: Cheryl Anderson

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

SB 1089 (Wilk) – As Amended June 6, 2022

SUMMARY: Authorizes a provider, for purposes of Medi-Cal reimbursement for covered optometric services, to obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from the California Prison Industry Authority (CALPIA.) Specifically, **this bill**:

1) Authorizes a provider participating in the Medi-Cal program to obtain eyeglasses from CALPIA or private entities, based on the provider's needs and assessment of quality and value.

2) Permits a provider, for purposes of Medi-Cal reimbursement for covered optometric services to obtain eyeglasses from a private entity, as an alternative to a purchase of eyeglasses from CALPIA.

3) Implements Medi-cal reimbursement only to the extent that federal financial participation is available.

4) Names these provisions the Better Access to Better Vision Act.

EXISTING LAW:

1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low-income individuals are eligible for medical coverage. (Welf. & Inst. Code, § 14000 et seq.)

2) Includes eyeglasses as a covered benefit under the Medi-Cal program. (Welf. & Inst. Code, §§ 14131.10, subd. (g), 14132.)

3) Authorizes CALPIA to operate industrial, agricultural, and service enterprises employing incarcerated individuals in California Department of Corrections and Rehabilitation (CDCR) facilities to provide products and services needed by the state or other public entity or public use, as specified. (Pen. Code, §§ 2801, subd. (a), 2807, subd. (a).)

4) Provides that one of the purposes of CALPIA is to create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure incarcerated individuals employed by CALPIA have the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. (Pen. Code, § 2801, subds. (a) & (b).)

5) Requires that all things authorized to be produced by CALPIA must be purchased by the state at the prices fixed by CALPIA. (Pen. Code, § 2807, subd. (b).)

6) Permits products to be purchased by state agencies to be offered for sale to inmates of the department and to any other person under the care of the state who resides in state-operated institutional facilities. (Pen. Code, § 2807, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1089 is a straightforward proposal that will provide better access to better vision, by allowing eye care providers to select where they obtain eyeglasses from, in order to best meet their patients' needs. Our state's Medi-Cal beneficiaries should have access to the best products available, and unfortunately, under current law, optometrists and other providers are limited in which eyeglasses they can provide to just those produced though the Prison Industry Authority. This system is fraught with problems: Medi-Cal beneficiaries reliant on these products face lengthy delays in receiving their glasses, receive incorrect products, and often are forced to use products of sub-par quality. This bill addresses this issue, ensuring that Californians have access to timely care and quality eyeglasses.

   "California Prison Industry Authority (PIA) operates two optical laboratories in California prisons that provide prescription eyewear to Medi-Cal beneficiaries. Beneficiaries must get their eyeglasses made by the PIA or go without eyeglasses. The system is plagued with problems, as the eyeglasses are often late, incorrect, or of poor quality. The pandemic has made a bad situation much worse. Some patients have had to wait for more than four months for their eyeglasses, which is unacceptable. The Department of Health Care Services claims that the backlog resulting from prison closures have been cleared up, but systemic problems with the PIA system remain. Children who are Medi-Cal beneficiaries deserve timely, quality eyeglasses that are consistent with community durability standards. Cheaper materials may cause skin irritation and break much more easily. All children, regardless of income, deserve to have the same quality eyeglasses in a reasonable amount of time. PIA delays over the past year have resulted in children that are visually handicapped in their everyday classroom, recreational and other activities. Further, there is evidence that the PIA glasses mandate shrinks Medi-Cal provider networks. When coverage for adult eyeglasses was reinstated in 2021, two Medi-Cal managed care plans were forced to use the PIA labs. Many providers in San Mateo, Santa Barbara and San Louis Obispo threatened to drop Medi-Cal services if they are forced to send eyeglasses to the PIA for fabrication. The delays and extra hassle are unsustainable for these individuals given the very low reimbursement rates under Medi-Cal. This system greatly reduces the access to local care and timeliness of treatment for impacted communities."

2) **CALPIA Optical Program**: CALPIA is a self-supporting state entity that provides productive work assignments to nearly 7,000 incarcerated individuals within CDCR institutions. CALPIA manages over 100 manufacturing, service, and consumable operations in all of the state's prisons, and all of CALPIA's goods and services are sold to government agencies. In addition to work assignments, CALPIA offers certifications and apprenticeships

to incarcerated individuals. (https://www.calpia.ca.gov/about/ [as of June 17, 2022].)

According to information provided to this committee by CalPIA, the optical program operates laboratories located at two of the state's prisons where lenses are made. A third laboratory is minimally operating now. The optical program currently provides job training to 295 incarcerated persons. CalPIA has slated an additional 125 positions for incarcerated women when the new laboratory is fully operational in July. Since 2008 to May 2022 there have been 1,997 incarcerated individuals who have worked in a CALPIA optical position and 1,284 incarcerated individuals who have earned an accredited certification in the optical program. CALPIA partners with the American Board of Opticianry and individuals can earn optician certifications. CALPIA participants are paid a nominal amount with raises for promotions. The pay scale is currently $.35 to $1.00 per hour.

A recent study from the University of California, Irvine, compared CALPIA participants with at least six months in the program and released between August 2014 and July 2018 with incarcerated individuals who were accepted into the CALPIA program and put on a waitlist but were released before they could actively participate. By three years after release, only 15.4 percent of CALPIA participants had been returned to custody. In addition, only 20.8 percent of CALPIA participants had been reconvicted of a crime after three years of release. The number of arrests among CALPIA participants was also lower. (Hess & Turner, The Effect of Prison Industry on Recidivism: *An Evaluation of the California Prison Industry Authority (CALPIA)* (2021) U.C. Irvine, at pp. i. 16, 17.)

3) **CALPIA Optical Program– Fabrication Delays and Quality Concerns**: The DHCS contracts with CALPIA to make eyeglasses for Medi-Cal recipients. Providers participating in the Medi-Cal program must order lenses from CALPIA unless the lens required cannot be accommodated by CALPIA. (https://catalog.calpia.ca.gov/ [as of June 17, 2022]; Pen. Code, § 2807.)

In 2020, CenCal, the Medi-Cal health plan for the central coast, was required to use CalPIA for all of its eyewear fabrication benefits. This led to prescription delays and caused local eye care professionals to drop out of CenCal's network. The change dramatically altered the ability of members, including children, to get eyewear easily. "Eye issues require intervention early on to avoid impacts to children's academic progress and quality of life down the road…." (https://www.newtimesslo.com/sanluisobispo/medi-cals-shift-to-prison-labor-for-prescription-eyewear-could-collapse-local-care-system-experts-warn/Content?oid=10067153 [as of June 21, 2022].)

According to a February 2021 memo from DHCS to providers, due to the COVID-19 public health emergency, Medi-Cal optical services by CALPIA was experiencing delays in processing lens orders. (https://optical.pia.ca.gov/pool/Provider_Memo_Final.doc [as of June 17, 2022].)

According to information provided to this committee by CALPIA, they expect to be back to their five-to-nine-day turnaround time, per their contract with DHCS, by July. In 2021, 54.3 percent of CALPIA orders were completed at backup labs. So far this year, that number is down to 34.08 percent.
With respect to quality concerns, the industry standard for an order having to be reproduced (Redo) is 1.5 percent. From January 2011 through January 2022, CALPIA says it exceeded

the industry Redo rate one month, in April 2020, the first full month of the pandemic.

4) **Argument in Support**: According to the *California Optometric Association*, the sponsor of this bill, "The PIA has been plagued with problems for years as the eyeglasses are often late, incorrect, or of poor quality. The pandemic has made a bad situation much worse. Some patients have had to wait for more than four months for their eyeglasses. The Dept of Health Care Services claims that the backlog resulting from prison closures have been cleared up, but that is not what our members tell us. In a March/April 2022 survey, 33% of optometrists report an average PIA eyeglasses turn-around time of 1-2 months. An additional 39% of respondents say eyeglasses take over 2 months. This is unacceptable, especially for kids in school. We need your immediate intervention to allow optometrists to get eyeglasses covered by Medi-Cal made outside the prison system.

"Thousands of people are suffering throughout our state because they cannot see well enough to perform necessary life functions. Each day we are hearing tragic stories from our patients about how their lives are affected by this - children who are already disadvantaged cannot participate in online learning sessions and are falling behind; parents cannot work to provide for their families. Some patients are getting traffic tickets because they cannot see clearly. Others are having to live with severe headaches and other symptoms caused by uncorrected vision problems.

"Each day our member optometrists are having to deal with understandably frustrated patients who get aggressive, verbally abusive, and make threats because they are desperate for their glasses. Most of our Medi-Cal patients cannot afford to purchase eyewear out of pocket and so they are forced to put their lives on hold for months until the PIA lab returns their glasses.

"Over the past two years, optometrists have sought emergency exemptions so that they can fabricate eyeglasses outside the PIA system to help end the suffering, yet the state Department of Health Services continue to turn them down without offering any other assistance or solution. One local health plan, the Inland Empire Health Plan, started covering eyeglasses outside the PIA system out of their own funds, but that ended in June, 2021.

"Multiple studies have shown the negative effects on academic performance when accessible vision care is unavailable. Some studies have even tied lack of access to vision care to delinquent behavior in children.

"This vision care crisis caused by the COVID-19 epidemic has brought to the spotlight the failure of the single supplier policy. Our members tell us that the requirement to fabricate glasses through the PIA has reduced the number of providers willing to accept Medi-Cal. The consequences to our youthful patients cannot be understated. We need your immediate action change the law that requires Medi-Cal eyeglasses to be made at the prisons."

5) **Argument in Opposition**: According to *one private individual*, "CALPIA has been fabricating prescription eyewear for Medi-Cal beneficiaries since the 1980's. The CALPIA labs are licensed Medi-Cal providers reimbursed by Department of Health Care Service for producing optical lenses.

"The program has man success stories with formerly incarcerated working as Opticians, Lab

Managers, and in other positions in the optical industry. Optical program graduates have obtained jobs at LensCrafters, National Vision, and Sight for Sore Eyes and other businesses.

"Throughout COVID-19, CALPIA worked diligently to be responsive to its customers while prioritizing the health and safety of its workforce. As with most manufacturing businesses across the country, CALPIA worked through the confines of the pandemic. CALPIA worked with Optical contractors and back-up labs who helped produce glasses for Medi-Cal recipients.

"CALPIA has a targeted turnaround time of five business days. For nine-years the monthly average turnaround time was consistently at, or below the five-day target.

"As with most manufacturing across the world, the pandemic increased turnaround times due to the unavailability of workers to work in the Optical labs. CALPIA is confident that barring any further COVID outbreaks, turnaround times will be back under the five-day target by July 2022.

"CALPIA has consistently provided high-quality results with minimal need to remake lenses. The "Redo" rates show from January 2011 through January 2022, that average was well below 1 percent. This is particularly noteworthy as the industry standard it to be below 1.5%."

6) **Related Legislation**: SB 1371 (Bradford), would require the California Department of Corrections and Rehabilitation (CDCR) to adopt a five-year plan to increase the compensation for incarcerated persons. SB 1371 is pending in the Assembly Appropriations Committee.

7) **Prior Legislation**: AB 579 (Flora), Chapter 520, Statutes of 2021, authorized the California Department of Forestry and Fire Protection to purchase personal protective equipment from CALPIA or private entities, based on the Department's needs and assessment of quality and value.

REGISTERED SUPPORT / OPPOSITION:

Support

California Optometric Association (Sponsor)
Children Now
Firstsight Vision Services, INC. & Affiliates
Hero Practice Services
Vision to Learn

Opposition

2 Private Individuals

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

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

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

SB 1223 (Becker) – As Amended June 23, 2022

As Proposed to be Amended in Committee

SUMMARY: Makes changes to mental health diversion eligibility and suitability provisions. Specifically, **this bill**:

1) Changes the criteria for a court to be required to consider mental health diversion by:

   a) Providing that a defendant must be diagnosed with a mental health disorder within five years, as specified, in order to be eligible for mental health diversion; and,

   b) Creating a presumption that a mental health disorder was a significant factor in the commission of an offense unless there is clear and convincing evidence that the mental disorder did not cause the offense to be committed.

2) Authorizes a court to consider an outlined treatment plan that deals with the defendant's mental disorder when deciding whether the defendant poses an unreasonable risk of danger to society.

3) States that an offense may be diverted no longer than two years if it is a felony, and one year if it is a misdemeanor.

4) States that if the defendant is referred to a county mental health agency and the agency declares it is unable to provide services to the defendant, the declaration is not evidence that the defendant is unsuitable for diversion. Allows the declaration to be submitted via letter.

5) Defines a "qualified mental health expert" to include a psychiatrist, psychologist, or other specified person with the requisite knowledge and training which would qualify them as an expert.

6) Updates cross-references in conformity with these provisions.

EXISTING LAW:

1) Authorizes diversion programs for specified crimes (Pen. Code, §§ 1000 et seq. for drug abuse; Pen. Code, § 1001.12 et seq. for child abuse; Pen. Code, §§ 1001.70 et seq. for contributing to the delinquency of another, Pen. Code, §§ 1001.60 et seq. for writing bad checks) and for specific types of offenders (Pen. Code, §§ 1001.80 et seq. for veterans; Pen. Code, §§ 1001.83 for caregivers; Pen. Code, §§ 1001.35 et seq. for persons with mental disorders).

2) States that the purpose of mental health diversion is to promote the following:

   a) Increased diversion of individuals with mental disorders to mitigate the individuals' entry and reentry into the criminal justice system while protecting public safety;

   b) Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and,

   c) Providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code, § 1001.35.)

3) Authorizes a court to, after considering the positions of the defense and prosecution, grant pretrial mental health diversion to defendant charged with a misdemeanor or a felony if the defendant meets all of the following requirements:

   a) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia, and the defense produces evidence of the defendant's mental disorder which must include a recent diagnosis by a qualified mental health expert;

   b) The court is satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense, as provided;

   c) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder motivating the criminal behavior would respond to mental health treatment;

   d) The defendant consents to diversion and waives their right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment due to the their mental incompetence and cannot consent to diversion or give a knowing and intelligent waiver of their right to a speedy trial;

   e) The defendant agrees to comply with treatment as a condition of diversion; and,

   f) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. In making this determination, the court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate. (Pen. Code, § 1001.36, subds. (a)-(b).)

4) Excludes defendants from mental health diversion eligibility if they are charged with murder, voluntary manslaughter, a sex-registerable offense except for indecent exposure, or offenses involving weapons of mass destruction. (Pen. Code, § 1001.36, subd. (b)(2).)

5) Defines "pretrial diversion" as the postponement of prosecution to allow a defendant to undergo mental health treatment subject to the following conditions:

   a) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant;

   b) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services;

   c) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment;

   d) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years;

   e) Upon request, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion. (Pen. Code, § 1001.36, subd. (c).)

6) States that if any of the following circumstances exists, the court shall, after proper notice, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant:

   a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;

   b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion;

   c) The defendant is engaged in criminal conduct rendering him or her unsuitable for diversion; or,

   d) Aqualified mental health expert opines that::

      i. The defendant is performing unsatisfactorily in the assigned program; or

ii. The defendant is gravely disabled, as defined. (Pen. Code, § 1001.36, subd. (d).)

7) Requires the court to dismiss the criminal charges if the defendant has performed satisfactorily in diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. (Pen. Code, § 1001.36, subd. (e).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1223 will ensure that more Californians receive mental health support and resources they need by safely increasing the use of mental health diversion in appropriate cases. It is researched and recommended by the Committee on the Revision of the Penal Code after finding that mental health diversion has been substantially underutilized. SB 1223 preserves judicial discretion and is consistent with what other states have done."

2) **Incarceration of Offenders with Mental Disorders**: According to a 2019 study, more than 30% of the state's prison and 23 % of the jail populations have a mental illness. (Stanford Justice Advocacy Project, *Confronting California's Continuing Prison Crisis: The Prevalence And Severity Of Mental Illness Among California Prisoners On The Rise* <https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf> [as of Jun. 23, 2022].) Not only have the numbers of inmates with mental illness increased, the severity of psychiatric symptoms among inmates is also on the rise. (*Id.* at p. 2.) This population tends to serve longer sentences than the general population (*Id.* at p. 1.) and have a higher recidivism rate. Promoting treatment over incarceration has shown positive results in reducing recidivism:

> "To avoid incarceration, individuals with serious mental illness need to be diverted from the legal system and offered rehabilitative resources. The homeless comprise a significant share of individuals who come to the attention of law enforcement. A recent review revealed that lifetime arrest rates of homeless individuals with serious mental illness ranged from 62.9% to 90.0%, compared with approximately 15.0% in the general population. For this population, stable housing is a major issue. A recent randomized trial comparing housing first with assertive community treatment with treatment as usual demonstrated significantly decreased rates of arrest among those receiving assertive community treatment at 2 years. These results suggest that efforts to provide stable, affordable, and safe shelter for homeless individuals may lead to lower rates of involvement in the justice system...
>
> When individuals with serious mental illness are brought to court attention, several models have demonstrated positive outcomes, including mental health courts, drug courts, and Veterans Treatment Courts. Although they serve different populations, the common goal of all these court formats is to address the causes of behavior that brought an offender to police attention. Mental

> health courts are becoming more common in different communities, each with slight variations; however, common features include a specialized court docket that emphasizes problem solving, community-based treatment plans that are designed and supervised by judicial and clinical staff, regular follow-up with incentives and sanctions related to treatment adherence, and clearly defined "graduation" criteria. A recent prospective study of 169 individuals showed that the likelihood of perpetrating violence during the following year was significantly lower among participants processed through a mental health court than among individuals in a matched comparison group who were processed through traditional courts (odds ratio, 0.39; 95% CI, 0.16-0.95; P = .04)."

(Hirschtritt & Binder, *Interrupting the Mental Illness–Incarceration-Recidivism Cycle* (Feb. 21, 2017) 317 JAMA 695-696, fn. omitted.)

3) **Mental Health Diversion Law**: In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. (AB 1810 (Committee on Budget) Chapter 34, Statutes of 2018.)

The stated purpose of the diversion program is "to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (Pen. Code, § 1001.35, subd. (b).) The law gives discretion to courts to grant diversion if the minimum standards are met, and, correspondingly, refuse to grant diversion even though the defendant meets all of the requirements:

> "There may be times, because of the defendant's circumstances, where the interests of justice do not support diversion of the case. The defendant's criminal or mental health history may reflect a substantial risk the defendant will commit dangerous crimes beyond the "super strikes" identified in section 1001.36, subdivision (b)(6). It may be that because of the defendant's level of disability there is no reasonably available and suitable treatment program for the defendant. The defendant's treatment history may indicate the prospect of successfully completing a program is quite poor. Conduct in prior diversion programs may indicate defendant is now unsuitable. (See § 1001.36, subd. (h) [the court may consider past performance on diversion in determining suitability].) The court may consider the defendant and the community will be better served by the regimen of mental health court. (See §1001.36, subd. (c)(1)(B) [the court may consider interests of the community in selecting a program].) Clearly the court is not limited to excluding persons only because of the risk of committing a "super strike" – the right to exclude because of dangerousness goes well beyond that limited list. In short, the court may consider *any* factor relevant to whether the defendant is suitable for diversion."

(J. Couzens, *Memorandum RE: Mental Health Diversion (Penal Code §§ 1001.35-1001.36) (AB 1810 & SB 215)* [revised] (Nov. 14, 2018), p. 4, original italics.)

This bill changes the eligibility requirements for a defendant to be considered for mental health diversion by removing the requirement that the court make a determination that the defendant suffers from a mental disorder and instead requires that the defendant have been

diagnosed with a mental disorder within the past five years. This bill would also create a rebuttable presumption that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not.

This bill seeks to separate out the current eligibility factors based on the defendant's mental disorder from the factors the court shall consider when determining whether the defendant is suitable for diversion – i.e. the defendant's symptoms of the mental disorder would respond to mental health treatment and the defendant will not pose an unreasonable risk to public safety if treated in the community. In making a determination on the suitability factors, the bill retains the court's discretion to grant or deny mental health diversion to a person who is otherwise eligible.

4) **Committee on the Revision of the Penal Code's Recommendation**: On January 1, 2020, the Committee on the Revision of the Penal Code ("Committee") was established within the Law Review Commission to study the Penal Code and recommend statutory reforms. (SB 94, Ch. 25, Stats. 2019; Gov. Code, § 8280.) The Committee's objectives are, in part, to simplify and rationalize the substance of criminal law, and to establish alternatives to incarceration to aid in rehabilitating offenders. (Gov. Code, § 8290.5, subd. (a).) In making recommendations to achieve these objectives, the Committee may recommend adjustments to the length of sentence terms. (Gov. Code, § 8290.5, subd. (b).) The Committee is required to prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year. (Gov. Code, § 8293, subd. (b).)

In December of 2021, the Committee released its second annual report with seven recommendations. (*Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code < http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf > [as of Jun. 23, 2022].) The Committee's recommendations are unanimous and build on research and testimony from expert witnesses who addressed the Committee.

One of the Committee's recommendations is to strengthen the mental health diversion law. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program. (*Id.* at p. 17.) According to the report:

> "While there is limited data on the use of mental health diversion, it appears that the law could be used much more frequently. For example, Los Angeles County has only diverted a few hundred people using the law. Yet an estimated 61% of people in the Los Angeles County jail system's mental health population were found to be appropriate for release into a community-based diversion program, according to a recent study by the RAND Corporation.
>
> To increase the use of mental health diversion in appropriate cases, the procedural process for obtaining diversion could be simplified by presuming that a defendant's diagnosed "mental disorder" has a connection to their offense. A judge could deny diversion if that presumption was rebutted or for

> other reasons currently permitted under the law, including finding that the individual would pose an unreasonable risk to public safety if placed in a diversion program.
>
> This modification of the mental health diversion statute would harmonize the law with other more specialized mental health diversion statutes that do not require showing such a connection, including Penal Code sections 1170.9 (post-conviction probation and mental health treatment for veterans) and 1001.80 (military pre-trial diversion program). And research into the related area of drug courts has shown that "tight eligibility requirements" are the most important reason that drug courts have not contributed to a meaningful drop in incarceration."

(*Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code, p. 17, fn. omitted <http://www.clrc.ca.gov/CRPC.html#:~:text=The%20Committee%20on%20Revision%20of%20the%20Penal%20Code%20has%20released,California's%20mental%20health%20diversion%20law.> [as of Jun. 23, 2022].)

This bill would codify the Committee's recommendation and make additional changes including providing a definition for "qualified health expert," specifying that the maximum term of diversion for persons diverted for a misdemeanor offense is one year, and stating that a county mental health agency's inability to provide services to a defendant does not mean that the defendant is unsuitable for diversion.

5) **Argument in Support**: According to the bill's sponsor, *American Civil Liberties Union*, "In its most recent report, however, the Committee on Revision of the Penal Code (CRPC) concluded that the mental health diversion law has been substantially underutilized due, in part, to its stringent eligibility requirements. Under existing law, an individual can qualify for diversion only if he or she proves that their mental disorder "substantially contributed" to the commission of the charged offense. Noting that the law in other states, as well similar California mental health diversion statutes, including California's Veteran and Regional Center diversion laws, do not require such a showing, the CRPC recommended removing this barrier. In addition, the Incompetent to Stand Trial Workgroup of the Department of Health and Human Services, created last year by AB 133, included a similar recommendation in its report last year with the goal of reducing the amount of people sent to the state hospital.

   "In light of these recommendations, SB 1223 creates a rebuttable presumption that there is a nexus between a person's mental health condition and the charged offense. Importantly, SB 1223 preserves judicial discretion and does not require courts to grant diversion, even if such a finding is made. SB 1223 additionally brings the mental health diversion statute into accord with existing law by establishing a twelve-month limit on the period for misdemeanor diversion, thereby decreasing costs and making the mental health diversion period equivalent to the probation period for misdemeanor cases. SB 1223 will improve public safety by eliminating barriers to participation in the existing mental health diversion program, ensuring that persons with mental health conditions can get the treatment they need. For these reasons, ACLU California Action is proud to sponsor SB 1223."

6) **Argument in Opposition**: According to the *California District Attorneys Association*, "Regrettably, the recent amendments to SB 1223 do not address the fundamental issues that led to our opposition of this legislation. This amended bill still allows and encourages those without the training of a psychologist or psychiatrist to diagnose someone with a mental disorder, something contrary to the best practices of forensic psychiatry. It compounds the problem by forcing a judge to make a finding that the defendant's diagnosed mental disorder, however tenuous, played a significant role in the charged criminal conduct. For example, if a defendant was diagnosed with depression, the court would be required to find that the diagnosed depression played a significant role in the offense, even when someone is charged with an unconnected serious or violent felony, such as attempted murder, assault likely to cause great bodily injury, or possession of an assault weapon. The District Attorney would be left without any ability to effectively challenge this finding because this legislation changes current law to require the People to prove a negative: that the mental illness of the defendant did not play a role in the commission of the charged offense.

"Currently, the diversion statute requires that the defense present evidence showing that the defendant's mental disorder played a substantial role in the commission of the charged offense. A judge is then vested with the discretion to determine whether there is sufficient proof of the nexus between the mental disorder and the criminal conduct to qualify the defendant for diversion. SB 1223 eliminates this requirement and the judicial discretion. It allows a defendant to abuse the statutory relief afforded in cases where the criminal conduct is not at all connected to the mental health diagnosis. For example, the proposed changes would allow a defendant, after being charged with felony domestic violence causing great bodily injury, to obtain a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) from someone lacking the training of a psychologist or psychiatrist. Then, despite the obvious disconnect between that disorder and the criminal conduct, a judge would nonetheless be required to find that the ADHD played a significant role in the crime making the defendant presumptively eligible for diversion. Such changes will undoubtedly incentivize contrived mental health defenses, especially since the benefits of a dismissal of all charges are great and since SB 1223 also allows a defendant to repeatedly renew mental health diversion requests before every judge he appears in front of, even if another judge has previously ruled that diversion is not appropriate.

"Regrettably, the current proposed amendments to the mental health diversion statute in SB 1223 do little to alleviate the issues with this bill that we have previously pointed out. While we may be in opposition to the currently worded legislation, we are not in opposition to the concept of mental health diversion programs to better address the needs of the justice involved mentally ill. As stated in our previous letter, we stand ready to partner with efforts that balance those needs with the need to protect public safety."

7) **Related Legislation**: SB 1338 (Umberg), would create court programs which would authorize people to petition courts on behalf of individuals with mental and substance abuse issues to have the court force them to undergo specified treatment. SB 1338 is currently in the Assembly Health Committee.

8) **Prior Legislation**:

   a) SB 666 (Stone), of the 2019-202 Legislative Session, would have added certain offenses which would preclude an individual from being eligible for mental health diversion. SB

666 was held in the Senate Public Safety Committee.

b) SB 215 (Beall) Chapter 1005, Statutes of 2018, made certain offenses ineligible for mental health diversion, among other things.

c) AB 1810 (Budget Committee) Chapter 34, Statutes of 2018, created mental health diversion.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association
Dbsa California
Disability Rights California
Initiate Justice
National Alliance on Mental Illness (NAMI-CA)
Smart Justice California

Opposition

California District Attorneys Association

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

Amended Mock-up for 2021-2022 SB-1223 (Becker (S))

Mock-up based on Version Number 96 - Amended Assembly 6/23/22
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 1001.36 of the Penal Code is amended to read:

1001.36. (a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the requirements specified in subdivisions (b), (c), and (d).

(b) Pretrial diversion pursuant to this section shall be considered if both of the following criteria are met:

(1) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis or treatment for a diagnosed mental disorder within the last five years by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The court is satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense. If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense. A court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) The court may grant pretrial diversion pursuant to this section if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion.

(4) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie

showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "Pretrial diversion" means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity has agreed to accept responsibility for the treatment of the defendant, and mental health services are provided only to the extent that resources are available and the defendant is eligible for those services.

(iii) If the court refers the defendant to a county mental health agency pursuant to this section, and the agency determines that it is unable to provide services to the defendant, the court shall accept a written declaration to that effect from the agency in lieu of requiring live testimony. Such a declaration shall serve only to establish that the program is unable to provide services to the defendant at that time and does not constitute evidence that the defendant is unqualified or unsuitable for diversion under this section.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay

restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in subdivisions (j) and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(2) An order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

(k) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

~~(m) A decision by any judge to deny diversion pursuant to this section shall not be binding on any other judge subsequently assigned to the same case at a later stage.~~

SEC. 2. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.

(i) The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community-based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of persons with a mental health disorder, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(v) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (iv), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1)

of subdivision (c) or the applicable period described in subparagraph (C) of paragraph (1) of subdivision (f) of Section 1001.36. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (g) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vi) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (h) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(vii) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in the defendant's state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a State Department of State Hospitals facility or treatment facility pursuant to this subdivision unless the State Department of State Hospitals facility or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(G) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. If, in the opinion of that expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.

(H) (i) The State Department of State Hospitals may, pursuant to Section 4335.2 of the Welfare and Institutions Code, conduct an evaluation of the defendant in county custody to determine any of the following:

(I) The defendant has regained competence.

(II) There is no substantial likelihood that the defendant will regain competence in the foreseeable future.

(III) The defendant should be referred to the county for further evaluation for potential participation in a county diversion program, if one exists, or to another outpatient treatment program.

(ii) If, in the opinion of the department's expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.

(iii) If, in the opinion of the department's expert, there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall proceed pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(B) The court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (a) of Section 1369, as applicable to the issue of whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to their physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the defendant's best medical interest in light of their medical condition.

(ii) If the court finds any of the conditions described in clause (i) to be true, the court shall issue an order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter. The order shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of their counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the

defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from their counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a State Department of State Hospitals facility or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the State Department of State Hospitals facility or other treatment facility, shall have the right to contact the patients' rights advocate regarding the defendant's rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws their consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication

review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for the defendant's interests at the hearing, review the panel's final determination following the hearing, advise the defendant of their right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To be given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(vii) If the administrative law judge upholds the certification pursuant to clause (ii), the court may, for a period not to exceed 14 days, extend the certification and continue the hearing pursuant to stipulation between the parties or upon a finding of good cause. In determining good cause, the court may review the petition filed with the court, the administrative law judge's order, and any additional testimony needed by the court to determine if it is appropriate to continue medication beyond the 21-day certification and for a period of up to 14 days.

(viii) The district attorney, county counsel, or representative of a facility where a defendant found incompetent to stand trial is committed may petition the court for an order to administer involuntary medication pursuant to the criteria set forth in subclauses (II) and (III) of clause (i) of subparagraph (B). The order is reviewable as provided in paragraph (7).

(3) When the court orders that the defendant be committed to a State Department of State Hospitals facility or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Arrest reports prepared by the police department or other law enforcement agency.

(F) Court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(I) Medical records.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a State Department of State Hospitals facility or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the

placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a State Department of State Hospitals facility pursuant to this subdivision, the court shall commit the defendant to the State Department of State Hospitals.

(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the State Department of State Hospitals facility and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a State Department of State Hospitals facility or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be electronically transferred or taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six-month progress reports pursuant to paragraph (1) of subdivision (b) to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant's patients' rights advocate or attorney. The court may require testimony from the treating psychiatrist and the patients' rights advocate or attorney, if necessary. The court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) Within 60 days before the expiration of the one-year involuntary medication order, the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed may petition the committing court for a renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2). The hearing on a petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(8) For purposes of subparagraph (D) of paragraph (2) and paragraph (7), if the treating psychiatrist determines that there is a need, based on preserving their rapport with the defendant or preventing harm, the treating psychiatrist may request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist. If the medical director of the facility designates another psychiatrist to act pursuant to this paragraph, the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the defendant prior to the hearing.

(b) (1) Within 90 days after a commitment made pursuant to subdivision (a), the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary.

If the defendant is in county custody, the county jail shall provide access to the defendant for purposes of the State Department of State Hospitals conducting an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code. Based upon this evaluation, the State Department of State Hospitals may make a written report to the court within 90 days of a commitment made pursuant to subdivision (a) concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary. If the defendant remains in county custody after the initial 90-day report, the State Department of State Hospitals may conduct an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary.

If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the State Department of State Hospitals facility or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until

the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the State Department of State Hospitals facility or person in charge of the facility shall report, in writing, to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court.

(A) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The defendant shall be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to subparagraph (A).

(C) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification made pursuant to clause (ii) of subparagraph (B), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(2) If the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, the reports made pursuant to paragraph (1) concerning the defendant's progress toward regaining competency shall also consider the issue of involuntary medication. Each report shall include, but not be limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to their physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if the defendant is not treated with antipsychotic medication.

(D) Whether the defendant has a mental disorder for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medication still exist and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, the order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(4) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court, and, if the defendant is not in county custody, returned to the custody of the county. The court shall transmit a copy of its order to the community program director or a designee.

(5) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the State Department of State Hospitals facility or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court, and custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) (A) The medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall provide notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to paragraph (1).

(B) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification pursuant to subparagraph (A), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(3) Whenever a defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(4) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the

proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(5) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (3) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to the initiation of proceedings that may be appropriate under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" does not include, except for State Department of State Hospitals facilities, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) This section does not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

SEC. 3. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of

the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

Date of Hearing: June 28, 2022
Counsel: Andrew Ironside

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

SB 1427 (Ochoa Bogh) – As Amended June 21, 2022

SUMMARY: Establishes two new grant programs: the Homeless and Mental Health Court Grant Program to be administered by the Judicial Council and the Transitioning Home Grant Program to be administered by the Board of State and Community Corrections (BSCC). Specifically, **this bill**:

1) Creates the Homeless Mental Health Court Grant Program (HMHC) to be administered by the Judicial Council and the Transitioning Home Grant Program (THGP) to be administered by the BSCC.

2) Requires the Judicial Council and BSCC to award grants under the respective programs to counties on a competitive basis, as specified.

3) Requires the Judicial Council and BSCC to establish minimum standards, funding schedules, and procedures for awarding grants to counties.

4) Provides the HMHC funds may be used by recipient counties for any one or more of the following purposes:

    a) Salaries and related costs for county personnel to provide mental health evaluation, housing navigation services, drug treatment referral, or other risk and needs evaluation for criminal defendants charged with misdemeanor or infraction offense, or who are convicted of a misdemeanor or infraction offense, and are homeless, at risk of homelessness upon release from jail, or who suffer from a mental disorder that was a significant factor in the commission of the charged misdemeanor or infraction;

    b) Establishment or expansion of a mental health court, homeless court, or hybrid collaborative court, expenditures for which may include training, salaries for support personnel, including probation department personnel, court facility expansion or renovation, or the expansion or renovation of treatment or evaluation space, but not to include judicial salaries;

    c) Funding for services provide pursuant to contracts between the recipient county's probation department and drug treatment providers, mental health service providers, housing providers, or for other rehabilitative programs ordered by the court for misdemeanor or infraction defendants whose cases are processed through the county's homeless court, mental health court, or hybrid collaborative court;

    d) Housing vouchers;

e) Salary and related costs for providing medication-assisted treatment for misdemeanor defendants whose cases are processed through the county's homeless court, mental health court, or hybrid collaborative court;

f) Funding to increase capacity for community-based, medication-assisted treatment and substance use disorder treatment services for misdemeanor or infraction defendants whose cases are processed through the county's homeless court, mental health court, or hybrid collaborative court, or to improve the care coordination and connections to medication-assisted treatment services upon placement in the program; and,

g) Activities that may include, but are not limited to, capital expenditures or operating costs to establish new reentry centers or treatment programs, expansion of existing community-based, medication-assisted treatment services to better meet the needs of participating defendants, and other strategies to ensure timely and appropriate access to medication-assisted treatment upon release from jail or placement in the program.

5) Requires counties receiving HMHC funds to operate the homeless court, mental health court, or hybrid collaborative court for defendants receiving services pursuant to this program on a deferred entry of judgment or diversion basis, or both.

6) States that a county is not prohibited from operating a homeless court, mental health court, or a hybrid collaborative court on a nondiversion, or a nondeferred entry of judgment basis for defendants who are ineligible or are found by the court to be unsuitable for diversion or deferred entry of judgment.

7) Requires HMHC funds received by a county to only be expended to provide specified services to eligible misdemeanor or infraction defendants who qualify for services and who are placed on diversion or on deferred entry of judgment by the court, except for specified incidental expenditures or specified expenditures for evaluation of defendants who are later determined to be unsuitable or ineligible for diversion or deferred entry of judgment.

8) Requires counties receiving HMHC funding to require collaboration between the court and county social service agencies to provide services for defendants participating in the program.

9) Prohibits HMHC grant funds from being used to supplant existing resources provided by the county probation department or by county social services.

10) Requires counties that receive HMHC grants to collect and maintain data pertaining to the effectiveness of the program, as indicated by BSCC in the request for proposals, including data on the rate of recidivism for criminal defendants who participate in the deferred entry of judgment or diversion program ordered by the court.

11) Requires information relating to the rate of recidivism that counties must collect to include all of the following, as it relates to defendants charged or convicted of a misdemeanor or infraction and placed on diversion or deferred entry of judgment and receive funded services:

a) The number and percentage who were sentenced to jail or prison within three years after being sentence or placed on diversion, and were provided services funded by an HMHC

grant;

b) The number and percentage who were convicted of a misdemeanor or a felony within three years after begin sentenced or placed on diversion, after having been provided with services funded by an HMHC grant; and,

c) The number and percentage who were arrested for a crime or had their parole, probation, mandatory supervision, or postrelease community supervision revoked within three years after being sentenced or placed on diversion, and were provided serviced funded by an HMHC grant.

12) Requires a county that receives an HMHC grant to include recidivism data for persons placed in the program less than three years prior to any reporting period established by the Judicial Council, as specified.

13) Authorizes a county that receives an HMHC grant to use state summary criminal history information, as defined, or local summary criminal history information, as defined, to collect data as required by the Judicial Council.

14) Authorizes the Judicial Council to establish a deadline by which counties that receive HMHC grants are required to submit data collected and maintained, as specified, to the Judicial Council to enable the council to comply with specified reporting requirements.

15) Provides that, for purposes of the HMHC grant program, "mental disorder" means that the defendant suffers from a mental disorder as identified in the most recent Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia.

16) Requires evidence of the defendant's mental disorder to be provided by the defense and to include a recent diagnosis by a qualified mental health expert.

17) Provides that, in opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

18) Requires the Judicial Council, on or before July 1, 2026, to compile a report describing the activities funded under the HMHC program and the success of those activities in reducing recidivism by defendants participating in a program of diversion or deferred entry of judgment who receive services provide under the HMHC program.

19) Requires BSCC to award THGP grants to county sheriffs or jail administrators on a competitive basis, as specified.

20) Requires BSCC to establish minimum standards, funding schedules, and procedures for awarding THGP grants.

21) Authorizes THGP funds to be used by recipient sheriffs or jail administrators for any one or more of the following purposes:

   a) Salaries and related costs for jail personnel to evaluate whether incarcerated persons released from jail are, or upon release from custody, will be homeless;

   b) Housing navigation services to assist incarcerated persons released from jail in locating housing;

   c) Housing vouchers;

   d) Transportation for incarcerated persons who would otherwise be homeless upon release without transportation to that housing; and,

   e) Salaries and related costs to provide reentry planning for incarcerated persons upon release from jail.

22) Prohibits THGP funds from being used to supplant existing resources provided by the sheriff, jail administrator, county probation department, or county social services department.

23) Requires sheriffs or jail administrators who receive THGP grants to collect and maintain data pertaining to the use of funds received, and to report it to BSCC.

24) Requires sheriffs who receive THGP grants to collaborate with appropriate government entities and community organizations that specialize in providing services, as described.

25) Authorizes the Judicial Council and BSCC to use up to 5 percent of the funds appropriated for the respective programs each year for the costs of administering the program, including, without limitation, the employment of personnel and evaluating of activates supported by the grant funding.

26) Requires BSCC, on or before July 1, 2026, to compile a report describing the activities funded and to submit that report to the Legislature.

27) Provides a sunset date for the HMHC and THGP programs of January 1, 2027.

EXISTING LAW:

1) Establishes the Board of State and Community Corrections (BSCC). (Pen. Code, § 6024, subd. (a).)

2) Requires the BSCC to do the following, among other things: develop recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state; identify, promote, and provide technical assistance relating to evidence-based programs, practices, and promising and innovative projects consistent with the mission of the board; and receive and disburse federal funds, and perform all necessary and appropriate services in the performance of its duties as established by federal acts. (Pen. Code, § 6027, subd. (b).)

3) Provides generally for the establishment of the Superior Courts. (Cal. Const., art. VI, § 4.)

4) Requires the Judicial Council to adopt guidelines for a comprehensive plan regarding collection of court-imposed fees, and for the superior courts and counties to implement those guidelines. (Pen. Code, § 1463.010.)

5) Requires the Judicial Council to establish a task force to evaluate criminal and traffic-related court-ordered debt imposed against adult and juvenile offenders. (Pen. Code, § 1463.02.)

6) Creates a court diversion program for those charged with certain drug offenses. (Pen. Code, § 1000 *et seq.*)

7) Creates a court diversion program for those with "mental disorders," as defined. (Pen. Code, § 1001.35 *et seq.*)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "In order to get individuals with mental illness and homeless individuals the care they need and to promote rehabilitation and housing stability, Senate Bill 1427 would create two grant programs: (1) a grant program to help counties to establish or expand collaborative mental health and homeless courts and (2) a grant program for counties to institute re-entry services for jail inmates at risk of becoming homeless upon release.

   "California is in the middle of a statewide mental health crisis. Nearly 1 in 6 California adults has a mental health need, and 1 in 20 suffers from a serious mental illness that makes it difficult to carry out major life activities. These numbers are even more severe when we look at the state's homeless populations, with 78% struggling with mental illness, substance use disorder, and/or physical disability.

   "In addition, growing numbers of inmates are waiting for state hospital beds, sometimes for months at a time. In the past five years, the number of California inmates deemed incompetent to stand trial and ordered sent to state hospitals increased 60 percent. A few decades ago, fewer than half of state hospital patients came from the criminal justice system. Today, more than 90 percent do. When people in psychiatric crisis land in emergency rooms and jails, it's frequently because they can't get treatment in the community—even when they ask for it.

   "Many California counties have begun turning to mental health and homeless courts as a means of addressing the root cause of these issues. These programs allow for the individuals with mental illness and homeless individuals to get the resources that they need in order to turn their lives around. These courts also work to ease prison and jail crowding by getting people into treatment instead of custody, thus reducing the chances of recidivism due to untreated mental illness.

   "Many California counties have "collaborative" courts to address the needs of, and improve the outcomes for, specialized populations of criminal offenders; this includes 44 counties

with mental health courts for adult offenders and 13 counties with homeless courts. However, these courts are often underfunded and have insufficient programming options for participating defendants."

2) **Homelessness in California:** Beyond simply seeing the growing number of tent encampments and unhoused people living on the streets, the most recent data on homelessness makes clear that California has a massive problem that, despite significant spending and efforts at reduction, continues to grow. The most recent single-night count from January 2020 (a count was made in 2022, but data has not yet been released) found that California had 28 percent of the nation's homeless population – over 160,000 – of which 70.4 percent were unsheltered, both of which are the highest rates in the nation. (California Senate Housing Committee, *Fact Sheet: Homelessness in California* (updated May 2021), <https://shou.senate.ca.gov/sites/shou.senate.ca.gov/files/Homelessness%20in%20CA%202020%20Numbers.pdf> [last visited June 23, 2022].) More than half of the unsheltered in the United States are in California. (*Ibid.*) More veterans are homeless in California than anywhere else in the United States, representing 31 percent of the nation's total. (*Ibid.)* Likewise, California is home to 15 percent of the nation's homeless children. (*Ibid.*) By comparison, California has just 11.9 percent of the nation's population, according to the most recent census data. (U.S. Census Bureau, *Resident Population for the 50 States, the District of Columbia, and Puerto Rio: 2020 Census, available at* https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table02.pdf.) In addition, California experienced the largest increase in homelessness in the nation from 2018 to 2019 (6.8 percent increase) and the second largest from 2007 to 2020 (45.8% increase). (*Ibid.*)

   While there are many causes of homelessness, the high cost of housing in California is a significant contributor. (Legislative Analyst's Office, *California's Homelessness Challenges in Context*, Presentations to Assembly Budget Subcommittee No. 6 (Feb. 13, 2020).) Wages have not kept pace with housing costs, particularly for low-income households. (*Ibid.*)

3) **Homeless and Collaborative Courts in California Today:** California has over 450 collaborative courts and homeless courts that "provide rehabilitation services and housing to individuals in need." (Judicial Council, *Report to the Chief Justice: Work Group on Homelessness* (2021) p. 19.) Collaborative courts generally use a team-based approach to address the underlying issues that led an individual to become involved with the criminal justice system. Teams can include judges, attorneys, probation officers, social workers, service providers, and others. These courts include, among other models, drug courts, reentry courts, mental health courts, homeless courts and veterans treatment courts.

   There are currently homeless court programs in 19 counties in the state. (https://www.courts.ca.gov/5976.htm) The first homeless court was created in San Diego in 1989 to specifically address issues facing homeless veterans. Homeless courts generally work with low-level offenders and offer community-based treatment and rehabilitation services rather than jail time to resolve citations and misdemeanors that often result from poverty and homelessness. Homeless courts use "an action-first model that requires participants to achieve individualized treatment, rehabilitation, or other goals before appearing in homeless court. Homeless courts are often convened once a month, and participants resolve their legal issues or cases in a single court appearance." (*Id.* at 20 (footnotes omitted).) According to the Judicial Council, "Homeless court programs recognize the voluntary efforts of participants to improve their lives and move from the streets toward self-sufficiency through community

based treatment or services. For participants who complete appropriate treatment or services, the homeless court will dismiss or reduce their charges and clear outstanding fines and fees. (*Id.* at 19.)

According to information provided by the author, there are currently mental health courts in 44 counties. The Judicial Council states:

> Mental health courts apply collaborative justice principles to combine judicial supervision with intensive social and treatment services to offenders in lieu of jail or prison or juvenile detention. These collaborative justice principles include a multidisciplinary, nonadversarial team approach with involvement from justice system representatives, mental health providers, and other support systems in the community. Offenders with mental illness are screened for inclusion in mental health courts, with screening and referral occurring as soon as possible after arrest. Each offender who consents to participate receives case management that includes supervision focused on accountability and treatment mentoring…
>
> All mental health courts follow a general drug court model, which involves offender assessment, judicial interaction, monitoring and supervision, graduated sanctions and incentives, and treatment services. All courts are also encouraged to follow the 10 essential elements of mental health court design and implementation, which were the result of a consensus among practitioners, policymakers, researchers, and others about what a mental health court is and what it should be. However, courts have various criteria for eligibility and use different processes, such as when and how to incorporate sanctions and incentives.

(Judicial Council, Mental Health Courts: An Overview (Apr. 2012) pp. 3-4 <https://www.courts.ca.gov/documents/AOCLitReview-Mental_Health_Courts--Web_Version.pdf> [last visited June 20, 2022].)

This bill would establish a grant program through which the Judicial Council would distribute funds to bolster efforts to create new, and to expand existing, homeless and mental health court programs throughout California.

4) **Judicial Council Recommends the Creation of More Collaborative Courts:** In 2020, Chief Justice Tani Cantil-Sakauye established a Work Group on Homelessness to "evaluate how court programs, processes, technology, and communications might be improved to better serve people who are without housing or are housing insecure." (*Work Group on Homelessness*, *supra*, at p. 1.) The work group was to "consider how the judicial branch might appropriately work with the executive and legislative branches to reduce homelessness." (*Ibid.*) It found:

> Lack of affordable housing is a major cause of homelessness: experts estimate that California is at least 3 million housing units short of current need. Eviction, foreclosure, conviction, incarceration, civil commitment, debt, increased medical or mental health deterioration or trauma, and loss of a driver's license or transportation are some of the circumstances of homelessness that may flow from the underlying causes. Being without housing can expose a person to legal consequences—such as punishment for loitering,

indecent exposure, trespassing, or a failure to appear in court—creating a cycle that is difficult to escape.

Systemic inequality and discriminatory housing practices also significantly contribute to homelessness. Studies show that homelessness disproportionately affects those who have already been marginalized or are highly vulnerable, such as people of color, members of the LGBTQIA+ community, youth, foster youth, the elderly, military veterans, and people who have been incarcerated or convicted. Moreover, although it is illegal to discriminate in housing sales, rentals, and lending, equal opportunity does not exist for all. Information gathered by the work group indicates that explicit and implicit biases and systemic disparities continue to exist and affect housing access and retention. (*Id.* at 2 (footnotes omitted).)

According to the work group, homelessness itself is a barrier that impedes access to justice. The group found homeless courts to be a cost-effective model, with savings for the courts exceeding costs, and encouraged "courts to pursue available outside funding to supplant these costs, such as applicable grants administered by the Judicial Council or competitive grants offered through state and federal funding agencies." (*Id.* at 21.) It recommended establishing homeless courts programs in more jurisdictions to reduce barriers to housing stability by clearing fines, fees, warrants, and outstanding cases after treatment and rehabilitation; and emphasized that homeless court eligibility criteria should be as expansive as feasible and should include cases involving higher-level offenses, when appropriate. (*Id.* at 20.)

On collaborative courts more generally, the work group recommended:

- Collaborative courts should be expanded throughout the state by increasing the funding and caseload capacity of existing programs. Courts should ensure that their collaborative court eligibility criteria are as expansive as feasible to enable as many appropriate cases as possible to be processed through the collaborative court programs.

- Courts should implement new collaborative court programs in appropriate jurisdictions. (*Id.* at 22.)

Again, the work group found that these courts saved money, but required dedicated funding to allow caseloads to increase. It encouraged "courts to pursue applicable grants administered by the Judicial Council and competitive grants offered through state and federal funding agencies." (*Id.* at 23.)

The proposed grant programs in this bill follow the Judicial Council's recommendation to increase the number of homeless court programs and financially support existing homeless and mental health courts.

5) **Extending Grant Availability to County Probation:** In addition to creating grants to fund homeless and mental health courts, this bill would also create a grant program for sheriffs and jail administrators to connect persons in jail facing potential homelessness upon release with needed services. For example, the grant funds could be used to help support housing navigation services, housing vouchers, and reentry planning, among other things.

However, many incarcerated persons who served sentence in state prison might also benefit

from the services this grant program would support. Realignment shifted the supervision of some released persons incarcerated in state prison from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for incarcerated persons released from prison on or after October 1, 2011 is limited to defendants whose term was for specified crimes (e.g. serious or violent felonies, three strikes, high-risk sex offenders). All other persons released from prison are subject to up to three years of postrelease community supervision (PRCS) under supervision of county probation departments. Many others struggling with homelessness or housing insecurity will avoid jail altogether, instead receiving probation. According to the Council of State Governments, "[p]robation and parole officers are well-positioned to reimagine their roles in helping people with behavioral health needs reentering the community obtain safe and affordable housing." (The Council of State Governments Justice Center, *The Role of Probation and Parole in Making Housing a Priority for People with Behavioral Health Needs*, (March 2021) <https://csgjusticecenter.org/publications/the-role-of-probation-and-parole-in-making-housing-a-priority-for-people-with-behavioral-health-needs/> .)

Both populations – persons on probation and those on PRCS – likely could benefit from the services that these grant funds are meant to support. Thus, allowing county probation departments to apply for these grant funds may further support the goals of this bill.

6) **Argument in Support**: According to the *Social Work Action Group*, "I write in support of Senate Bill 1427, which would create two grant programs: (1) a grant program to help counties to establish or expand collaborative mental health and homeless courts and (2) a grant program for counties to institute re-entry services for jail inmates at risk of becoming homeless upon release.

"In addition, growing numbers of inmates are waiting for state hospital beds, sometimes for months at a time. In the past five years, the number of California inmates deemed incompetent to stand trial and ordered sent to state hospitals increased 60 percent. A few decades ago, fewer than half of statehospital patients came from the criminal justice system. Today, more than 90 percent do. When people in psychiatric crisis land in emergency rooms and jails, it's frequently because they can't get treatment in the community—even when they ask for it.

"Many California counties have begun turning to mental health and homeless courts as a means of addressing the root cause of these issues; this includes 44 counties with mental health courts for adult offenders and 13 counties with homeless courts. These programs allow for the individuals with mental illness and homeless individuals to get the resources that they need in order to turn their lives around. These courts also work to ease prison and jail crowding by getting people into treatment instead of custody, thus reducing the chances of recidivism due to untreated mental illness. However, these courts are often underfunded and have insufficient programming options for participating defendants. SB 1427 will ensure that counties have the resources to expand or establish these life-changing courts and programs."

7) **Related Legislation**:

a) SB 1223 (Becker), would change the eligibility criteria for pretrial diversion for defendants suffering from a mental disorder to those with a diagnosis of a mental disorder, instead of requiring a court finding that the defendant suffers from a mental

disorder. SB 1223 is currently pending in this committee.

b) SB 903 (Hertzberg), would require the California Rehabilitation Oversight Board (C-ROB) to examine the efforts of CDCR to address the housing needs of individuals who are released to parole, including those with serious mental health needs. SB 903 is currently pending in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 2220 (Muratsuchi), of the 2021-2022 Legislative Session, would have established the Homeless Courts Pilot Program to be administered by the Judicial Council. AB 2220 was referred to the Assembly Appropriations Committee and held in the Suspense File.

b) SB 1006 (Jones), of the 2021-2022 Legislative Session, would create a grant program within the Department of Justice that enables local law enforcement agencies to establish and operate homeless outreach teams. SB 1006 was referred to the Senate Appropriations Committee and held in the Suspense File.

c) AB 2262 (Levine), of the 2015-2016 Legislative Session, would have authorized a defendant who is or has been eligible for public mental health services due to a serious mental illness or who is eligible for Social Security Disability Insurance benefits due to a diagnosed mental illness to petition the court for a sentence that includes mental health treatment. AB 2262 was referred to the Senate Appropriations Committee and held in the Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
California State Sheriffs' Association
County Behavioral Health Directors Association
Goodwill Southern California
Inland Action
San Bernardino County Sheriff's Department
San Bernardino; City of
Social Work Action Group

1 Private Individual

Opposition

None

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