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

AGENDA

9:00 a.m. -June 12, 2018
State Capitol , Room 126

Item	Bill No. & Author	Counsel	Summary
1.	SB 215 (Beall)	Mr. Billingsley	Diversion: mental disorders.
2.	SB 439 (Mitchell)	Ms. Uribe	Jurisdiction of the juvenile court.
3.	SB 746 (Portantino)	Mr. Billingsley	Firearms and ammunit ion: prohibited possession: transfer to licensed dealer.
4.	SB 896 (McGuire)	Mr. Pagan	Aggravated arson.
5.	SB 923 (Wiener)	Ms. Uribe	Criminal investigations: eyewitness identification.
6.	SB 1005 (Atkins)	Ms. Uribe	Crime victim compensation: relocation expenses: pet costs.
7.	SB 1050 (Lara)	Ms. Burnley	Exonerated inmates : transitional services.
8.	SB 1106 **(Hill)**	Mr. Fleming	Young adults: deferred entry of judgement pilot program.
9.	SB 1146 (Stone)	Ms. Burnley	Prisoners: rights.
10.	SB 1160 (Hueso)	Ms. Burnley	Trespass: gaming facility on Indian lands.

11.	SB 1163 (Galgiani)	Mr. Pagan	Postmortem examination or autopsy: unidentified body or human remains: medical examiner: attending physician and surgeon.
12.	SB 1199 (Wilk)	Mr. Fleming	Sex offenders: release.
13.	SB 1232 (Bradford)	Ms. Uribe	Victims of crime: application for compensation.
14.	SB 1331 (Jackson)	Mr. Billingsley	Peace officers: domestic violence training.
15.	SB 1346 (Jackson)	Mr. Pagan	Firearms: multiburst trigger activators.
16.	SB 1382 (Vidak)	Mr. Pagan	Firearms: vehicle storage.
17.	SB 1393 (Mitchell)	Mr. Billingsley	Sentencing.

Date of Hearing: June 12, 2018
Counsel: David Billingsley

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

SB 215 (Beall)-As Amended January 25, 018
As Proposed to be Amended in Committee

CORRECTED

SUMMARY: Authorizes a court to postpone prosecution of a misdemeanor or a felony punishable in a county jail, and place the defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, that the defendant's mental disorder played a significant role in the commission of the charged offense, and that the defendant would benefit from mental health treatment. Requires consent of the prosecutor to place defendant in pretrial diversion when the defendant is charged with specified offenses. Specifically, **this bill**:

1) Allows a court to grant pretrial diversion to a defendant on a misdemeanor offense or felony offense punishable in a county jail (realignment), if the defendant meets the following criteria:

    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, or post-traumatic stress disorder. Evidence of the defendant's mental disorder shall be provided by the defense and may take the form of an opinion by a licensed psychiatrist or psychologist, records of prior psychiatric hospitalizations, evidence that the defendant receives federal Supplemental Security Income benefits, or any other reliable evidence; and

    b) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing 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, or records by qualified medical experts, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense;

    c) The court is satisfied that the defendant would benefit from mental health treatment; and

    d) The defendant consents to diversion and waives his or her right to a speedy trial.

2) Requires the consent of the prosecutor in order for the court to grant diversion pursuant to this bill when the defendant is charged with the following offenses:

    a) Any felony, with the exception of specified crimes against property, specified crimes involving malicious mischief, specified drug offenses, or car theft, including a conspiracy to commit these offenses or acting as an accessory to their commission;

    b) Any offense involving the unlawful use or unlawful possession of a firearm;

    c) A violation of manslaughter or vehicular manslaughter;

d) An offense for which a person, if convicted, would be required to register pursuant as a sex offender, except for indecent exposure;

e) A violation of child or elder abuse, domestic violence, stalking, or animal abuse;

f) An offense resulting in damages of more than $5,000; or,

g) An offense that occurs within 10 years of three separate referrals to diversion pursuant to this section.

3) States that if the provisions of this bill related to the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion pursuant to this section.

4) States that a violation for driving under the influence (DUI) is not eligible for diversion pursuant to the provisions of this bill.

5) Defines "pretrial diversion," for purposes of this bill as "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."

6) Requires the defense to arrange, to the satisfaction of the court, for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources, as specified.

7) Specifies that before approving a proposed treatment program, the court shall consider the requests of the defense, the requests of the prosecution, and the needs of the divertee and the community.

8) Requires that reports be provided to the court, the defense, and the prosecutor by the divertee's mental health provider on the divertee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A court shall consider setting more frequent progress report dates upon request of the prosecution or the defense, or upon the recommendation of the divertee's mental health treatment provider.

9) States that if it appears to the court that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the divertee, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstituted or whether the treatment program should be modified.

10) Specifies that that the diversion shall be no longer than two years.

11) States that 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.

12) Provides that if the person has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

13) States that upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted pursuant to this section.

14) Provides that upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred.

15) States that the divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified.

16) States that regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request.

17) Specifies that this bill does not relieve the divertee who successfully completes diversion pursuant to this bill of his or her obligation to disclose the arrest in a response to any direct question contained in any questionnaire or application for a position as a peace officer.

18) States that 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 diversion pursuant to this section may not be used in any other proceeding without the defendant's consent.

EXISTING LAW:

1) Provides for pretrial diversion of a misdemeanor offense when the defendant was or is currently a member of the military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. (Pen. Code, § 1001.80.)

2) States that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

3) Provides for diversion of misdemeanors when the defendant is a person with cognitive disabilities. (Pen. Code, § 1001.20 et seq.)

4) Provides for diversion of bad check cases. (Pen. Code, § 1001.60 et seq.)

5) Establishes the Law Enforcement Assisted Diversion program for offenses related to controlled substances, alcohol and prostitution. (Pen. Code, § 1001.85 et seq.)

6) Authorizes a trial court to "defer entry of judgment" (DEJ) for eligible drug offenders, provided the offender pleads guilty and completes an approved drug program, as specified. (Pen. Code, § 1000.)

7) Provides upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted DEJ for the offense, except as specified. (Pen. Code, § 1000.4, subd. (a).)

8) Authorizes a "preguilty plea" diversion for eligible drug offenders in counties where the court, the prosecutor and the public defender agree to use such a process. (Pen. Code, § 1000.5.)

9) Authorizes the District Attorney to approve pretrial diversion programs within the county of their jurisdiction, for misdemeanors that do not include DUIs. (Pen. Code, § 1001.2.)

10) Specifies that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process

from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)

11) Provides that a divertee is entitled to a hearing, as set forth by law, before his or her pretrial diversion can be terminated for cause. (Pen. Code, § 1001.4.)

12) States that if the divertee has performed satisfactorily during the period of pretrial diversion, the criminal charges shall be dismissed at the end of the period of diversion. (Pen. Code, § 1001.7.)

13) Specifies that upon successful completion of a pretrial diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified. (Pen. Code, § 1001.9, subd. (a).)

14) States that a record pertaining to an arrest resulting in successful completion of a pretrial diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.9, subd. (a).)

15) Requires non-violent drug possession offenders and parolees to receive drug treatment instead of incarceration. (Pen. Code, §§ 1210.1 and 3063.1.)

16) Specifies that when a person is charged with driving under the influence or alcohol or drugs, the court shall not suspend or dismiss the criminal proceedings because the defendant participates in education, training, or treatment programs. (Veh. Code, § 23640.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Roughly a third of inmates in California's jails suffer from serious mental illness. At least one study has concluded that California's jail system has become de facto the largest mental health service provider in the United States, despite being ill-equipped to do so. In the last decade alone, lawsuits resulting from jail overcrowding and inmate death or injuries relating to inadequate mental health care or mistreatment of the mentally ill have cost California hundreds of millions of dollars.

   "One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have little ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them of the underlying offense, thereby damaging their prospects for future employment and housing. For example, even where a defendant's offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense." The proposed bill would grant trial courts the discretion to offer diversion to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, that the defendant would benefit from mental health treatment AND that there is an available treatment program or programs available for the defendant.

   "In essence, if appropriate, a court may (but is not required to) impose the same rehabilitative probationary conditions on a defendant it would have imposed had the defendant been convicted (including that the defendant comply with a mental health treatment plan, obey all laws and make restitution to any victims), with the added incentive that successful completion of diversion would result in dismissal of the criminal case, without the permanent detriment of a criminal record.

"Because such diversionary sentences take advantage of existing community resources for the mentally ill, research suggests that such sentences will save counties money in the short-term on reduced trial and incarceration costs, and in the long-term based on reduced recidivism rates.

"Importantly, a court will not be authorized to grant diversion where no treatment program for the defendant exists. Thus, because the diversionary sentence authorized under this bill relies entirely on pre-existing and available space in community based mental health treatment programs, counties will not be required to create or pay for new treatment facilities or programs."

2) **Prevalence of Mentally Ill Offenders in Jails:** A 2009 study based on inmate interviews conducted in Maryland and New York jails found that, within the month previous to the survey, 16.7% of the inmates (14.5% of males and 31% of females) had symptoms of a serious mental illness (schizophrenia, schizoaffective disorder, bipolar disorder, major depression or brief psychotic disorder). However, 31% of the inmates who were asked to participate in the study refused, a subset that almost certainly included many individuals with paranoid schizophrenia. The interviews were conducted between 2002 and 2006. Given the continued growth of mental illness in the criminal justice system since that time and the high rate of refusers in the survey, it is reasonable to estimate that approximately 20% of jail inmates today have a serious mental illness. (Serious Mental Illness Prevalence in Jails and Prison, Treatment Advocacy Center, September 2016.)

   According to the Los Angeles Sheriff's Department (LASD), the overall jail population decreased in 2015, while the mentally ill population was on the rise. Between 2009 and 2016, LASD reports seeing a 60% increase in its mentally ill population. In early September 2016, a quarter of L.A. County's inmates received some form of mental health treatment. Because many of the mentally ill inmates need to be housed alone, it creates a bed shortage in the general population. (http://www.cnn.com/2016/09/22/us/lisa-ling-this-is-life-la-county-jail-by-the-numbers/index.html)

   Housing mentally ill inmates in a custodial setting creates other difficulties, in addition to bed shortages. Jails are often not set up to provide effective mental health treatment and are not the best treatment option for the inmate. Mentally ill inmates are expensive to house. Mentally ill inmates cost more than other prisoners for a variety of reasons, including increased staffing needs. For example, in Broward County, Florida in 2007, it cost $80 a day to house a regular inmate but $130 a day for an inmate with mental illness. (Serious Mental Illness Prevalence in Jails and Prison, Treatment Advocacy Center, September 2016.)

3) **Recommendations from Judicial Council Related to Diversion for Mentally Ill Defendants:** The Judicial Council convened a task force to examine the issues related to mentally ill defendants within the court system. The task force published their final report in December of 2015. The report recommended the development of diversion programs for mentally ill defendants. The report stated that resources must be dedicated to identify individuals with mental illness who are involved or who are likely to become involved with the criminal justice system. The report went on to say that interventions and diversion possibilities must be developed and utilized at the earliest possible opportunity. (*Mental Health Issues Implementation Task Force: Final Report*, Judicial Council, December 2015, P. 5.)

4) **Pretrial Diversion and Deferred Entry of Judgment:** Existing law provides avenues for diversion on misdemeanor charges through the court system. The statutory framework allows for diversion by means of deferred entry of judgment or pretrial diversion.

   In deferred entry of judgment, a defendant determined by the prosecutor to be eligible for deferred entry of judgment must plead guilty to the underlying drug possession charge. The court then defers entry of judgment and places the defendant in a rehabilitation and education program. If he or she successfully completes the program, the guilty plea is withdrawn and the arrest is deemed to have not occurred. If the defendant fails in the program, the court imposes judgment and sentences the defendant.

In pretrial diversion, the criminal charges against an eligible defendant are set aside and the defendant is placed in a rehabilitation and education program treatment. If the defendants successfully complete the program, the arrest is dismissed and deemed to not have occurred. If the defendant fails in the program, criminal charges are reinstated. Existing law provides that counties can set up a misdemeanor pretrial diversion program if the District Attorney, Courts and the Public Defender agree.

This bill would give the courts the authority to grant pretrial diversion to defendant charged with misdemeanors or felonies that are punishable in county jail under Realignment, if the defendant has a mental illness, the mental illness played a significant role in the commission of the offense, and the defendant would benefit from mental health treatment. DUI offenses are excluded from diversion under the provisions of this bill. Certain offenses that would otherwise qualify for diversion because they are misdemeanors or realigned felonies require the consent of the prosecutor in order for the defendant to be eligible for diversion. This bill requires that reports be provided to the court, the defense, and the prosecutor by the divertee's mental health provider on the divertee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A defendant may not be diverted for a period of time longer than two years. If a defendant successfully completes the diversion program then the criminal charges are dismissed. If the defendant is not performing satisfactorily in the diversion program, the court must hold a hearing to determine whether criminal proceedings should be reinstated.

Under the provisions of this bill, it is permissive for a judge to grant diversion when the conditions set forth in this bill exist. The permissive nature of this bill would provide judges the discretion to admit or deny a defendant with specified mental health issues to the diversion program. If a judge feels that a defendant's participation in a diversion program is not appropriate from the standpoint of public safety, or any other reason, the judge can prohibit the defendant from participating in diversion, and the prosecution would continue in the normal fashion. A judge would maintain discretion to fashion appropriate conditions for participation in, and successful completion of, diversion. Courts would have the discretion to tailor the conditions of the diversion to meet the needs of the individual defendant and the community based on the circumstances of each case.

5) **Requirement of District Attorney Approval for Diversion on Certain Charges and Separation of Powers Doctrine:** This bill would require district attorney's to consent to a defendant's participation in diversion if the defendant is charged with certain enumerated offenses that would otherwise be eligible for diversion under the provisions of this bill. California courts have reviewed district attorney participation and decision making in other statutory diversion programs. The statutory drug abuse diversion program was enacted by the Legislature in 1972. (See §§ 1000-1000.4.) Under that statutory scheme, when a defendant was charged with one of six specified drug offenses, the district attorney reviewed the defendant's file to determine whether he met certain minimum standards of eligibility for diversion established by the Legislature. If the defendant met the minimum criteria, the case was referred to the probation department for an investigation and report, and then the trial court, after a hearing on the matter, determined whether diversion was appropriate in the particular case. Even if the court found diversion appropriate, however, the statute gave the district attorney the power to veto the ultimate diversion decision.

In *People v. Superior Court* (*On Tai Ho)* (1974), 11 Cal.3d 58, the defendant challenged the district attorney's role in the last stage of the diversion process, where the district attorney was given the power to disapprove a trial court's decision, after a hearing, to grant diversion. The court found that the statute violated the principle of separation of powers because it gave the prosecution a veto at the judicial stage of a criminal proceeding, when the case was already before the court for disposition.

The courts have reiterated that holding in subsequent cases. ". . . when a district attorney is given a role during the 'judicial phase' of a criminal proceeding, such role will violate the separation-of-powers doctrine if it accords the district attorney broad, discretionary decisionmaking authority to countermand a judicial determination, . . ." *Davis v. Municipal Court* , 46 Cal. 3d 64, 84-85.

It is possible that a court could find that the provisions of this bill infringe on the separation of powers doctrine by requiring district attorney approval for mental health diversion when the defendant is facing

certain charges that are otherwise statutorily eligible for diversion under the provisions of this bill. This bill contains a language which provides a contingency should the courts make such a finding. This bill states that if the provisions of this bill related to the consent of the prosecutor are invalidated for any reason, the offenses listed above shall not be eligible for diversion pursuant to this section.

6) **Argument in Support**: According to the *Disability Rights California*, "SB 215 is an important step toward recognizing that the population of inmates suffering from a mental disorder is growing and provides opportunities for the courts and communities to begin providing effective alternatives for treatment other than the woefully non-therapeutic environment in jails. The Committee staff noted earlier this year in the analysis of SB 8 (Beall) that that the growth of persons with mental disabilities is occurring in both the state prison system and county jails.

"Additionally, people with mental illness are more likely to become involved with the criminal justice system and are more likely to be the victims of crime. Once incarcerated, people with mental illness tend to stay in detention longer. In Los Angeles County, for example, prisoners with mental illness were found to spend 2-3 times longer in jail than similarly situated prisoners without mental illness. Discrimination against people with mental illness is 'baked in' to state and local policies and practices, resulting in disproportionately high incarceration rates.

"Another significant contributor to the excessive lengths of incarceration for prisoners with mental illness is that, without appropriate treatment and other supports, many find it difficult to understand and follow rules resulting in loss of good time credits, additional criminal charges, and extensions of their term. Their placement in jail sets them up to fail.

"There is an urgent need for specific and targeted efforts to reduce the rates of incarceration of people with mental illness, and to facilitate successful diversion and reentry. The current situation is dire. Jails are not therapeutic environments. They are not designed to be mental health treatment centers. Prisoners with mental illness are significantly more likely than those without mental illness to be abused. They are more likely to commit suicide, the leading cause of death in jails. Further, it costs significantly more to incarcerate prisoners with mental illness than prisoners without this condition.

"The over-incarceration of people with mental illness is directly at odds with California's stated commitment to providing treatment in the least restrictive manner appropriate, with respect for the right to 'dignity, privacy, and humane care.'

"SB 215 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. It is crafted in a manner to ensure that treatment resources will be available and the best interests of the community are considered. Further, the bill recognizes that a crucial part of a successful treatment system is one that diverts individuals who can safely and effectively be treated and supervised outside of jail and prison settings. The diversion of criminal defendants with mental illness can improve both mental health and criminal justice outcomes."

7) **Related Legislation:**

a) AB 870 (Levine), would require a court to recommend that a defendant sentenced to state prison receive a mental health evaluation, if the court makes specified findings concerning the defendant's mental health status. AB 870 is on the Senate inactive file.

b) SB 142 (Beall), would establish the State Community Mental Health Performance Incentives Fund, which would provide monetary incentives for counties to avoid sending mentally ill offenders to prison. SB 142 is awaiting hearing in the Assembly Public Safety Committee.

8) **Prior Legislation**:

a) SB 8 (Beall), of the 2017-2018 Legislative Session, would have authorized a court to place a defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, that the defendant's mental disorder played a significant role in the commission of

the charged offense, and that the defendant would benefit from mental health treatment. SB 8 was held in the Assembly Appropriations Committee.

b) AB 154 (Levine), would require a court, upon the conviction of a defendant resulting in a state prison sentence, to recommend that the defendant participate in a counseling or education program having a mental health component while imprisoned if the court makes specified findings. AB 154 was vetoed by the Governor.

c) SB 1054 (Steinberg), Chapter 436, Statutes of 2014, clarifies that mental health grants be divided equally between adult and juvenile mentally ill offender crime reduction grants and streamline the grant process.

d) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

e) SB 1323 (Cedillo), of the 2005-2006 Legislative Session, would have appropriated $350,000 from the General Fund to the department for allocation, over five years, to the County of Los Angeles, at the consent of the county, for the purpose of funding one position to work, in conjunction with the Los Angeles County Superior Court, on a five-year Prototype Court Pilot Program for nonviolent felony offenders in the state who have been identified as having both serious mental health and substance abuse problems. SB 1323 was held in the Senate Appropriations Committee.

f) SB 643 (Ortiz), of the 2001-2002 Legislative Session, would have enacted the Mental Health Enhancement and Crime Prevention Act of 2001, which would require the board to reimburse counties meeting specified requirements for the excess cost of providing more effective psychotropic medications to inmates in county correctional facilities during their incarceration and after release. SB 643 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Board of Supervisors
American Civil Liberties Union of California
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Council of Community Behavioral Health Agencies
California Public Defenders Association
California Psychiatric Association
Californians for Safety and Justice
County Behavioral Health Directors Association of California
Disability Rights California
Drug Policy Alliance
Los Angeles Regional Reentry Partnership
Mental Health America of California
Mental Health Services Oversight & Accountability Commission
National Association of Social Workers, California Chapter
National Union of Healthcare Workers
Western Regional Advocacy Project

1 private individual

Opposition

None

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

Amended Mock-up for 2017-2018 SB-215 (Beall (S))

Mock-up based on Version Number 95 - Amended Senate 1/25/18
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Despite never being designed for the treatment or housing of those with mental health needs, jails have become the de facto mental health facilities in many communities across the country.

(b) Untreated mental health conditions frequently result in chronic homelessness and an inability to find stable employment or housing, increasing the likelihood that those suffering from mental illness come into contact with law enforcement.

(c) For many people suffering from mental disorders, incarceration only serves to aggravate preexisting conditions and does little to deter future lawlessness.

(d) For people who commit offenses as a direct consequence of a mental disorder, diversion into treatment is often not only more cost effective, but also more likely to protect public safety by reducing the likelihood that a person suffering from a mental health disorder reoffends in the future.

(e) Courts, as one of the first points of contact between the mentally ill and the state, can serve a useful function in identifying defendants with mental disorders and connecting them to existing services, thereby reducing recidivism.

SEC. 2. Chapter 2.9D (commencing with Section 1001.82) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 2.90. Diversion of Low-Level Offenders Whose Offense is a Product of Mental Illness

1001.82. (a) (1) Notwithstanding any other law, except as specified in paragraph (2), in any case before the court on an accusatory pleading alleging the commission of a misdemeanor offense or

felony offense punishable in a county jail pursuant to subdivision (h) of Section 1170, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if he or she meets all of the requirements specified in subdivision (b).

(2) Diversion is not available under this section without the consent of the prosecution for any of the following offenses:

(A) Any felony, with the exception of an offense specified in Title 13 (commencing with Section 450) or Title 14 (commencing with Section 594) of Part 1 of this code, Division 10 (commencing with Section 11000) of the Health and Safety Code, or Section 10851 of the Vehicle Code, including a conspiracy to commit these offenses or acting as an accessory to their commission.

(B) Any offense involving the unlawful use or unlawful possession of a firearm.

(C) A violation of Section 192 or 192.5.

(D) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(E) A violation of Section 273a, 273.5, 368,597, or 646.9.

(F) An offense resulting in damages of more than five thousand dollars ($5,000).

(G) An offense that occurs within 10 years of three separate referrals to diversion pursuant to this section. A grant of diversion on multiple charges filed under the same case number, or stemming from the same incident, shall constitute a single referral to diversion under this section.

(3) A violation of Section 23152 or 23153 of the Vehicle Code is not eligible for diversion pursuant to this section.

(4) It is the intent of the Legislature that the consent of the prosecution be required prior to a court granting diversion for any offense listed in subparagraphs (A) to (G), inclusive, of paragraph (2). If the provisions of paragraph (2) related to the consent of the prosecutor are invalidated for any reason, the offenses listed in subparagraphs (A) to (G), inclusive, of paragraph (2) shall not be eligible for diversion pursuant to this section.

(b) Pretrial diversion may be granted pursuant to this section if all of the following criteria are met:

(1) 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, 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 by a

qualified expert. In opining that a defendant suffers from a qualifying disorder, the expert may rely on an examination of the defendant, medical records, evidence that the defendant receives federal supplemental security income benefits, arrest reports, or any other reliable evidence.

(2) The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant's mental disorder played a significant role in the commission of the charged offense if, after reviewing 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, 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, the court concludes that the defendant's mental disorder substantially contributed to the defendant's involvement in the commission of the offense.

(3) The court is satisfied that the defendant would benefit from mental health treatment.

(4) The defendant consents to diversion and waives his or her right to a speedy trial.

(c) As used in this chapter, "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 the following:

(1) The defense shall arrange, to the satisfaction of the court, for 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 requests of the defense, the requests of the prosecution, and the needs of the divertee and 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 agency 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. Reports shall be provided to the court, the defense, and the prosecutor by the divertee's mental health provider on the divertee's progress in treatment not less than every month if the offense is a felony, and every three months if the offense is a misdemeanor. A court shall consider setting more frequent progress report dates upon request of the prosecution or the defense, or upon the recommendation of the divertee's mental health treatment provider.

(2) If it appears to the court that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the divertee, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstituted or whether the treatment program should be modified.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.

(4) Upon request, the court shall conduct a hearing to determine whether restitution within the meaning of Section I 202.4 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.

(d) If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. A court may conclude that a divertee has performed satisfactorily if, in the court's judgment, the divertee has substantially complied with the requirements of the treatment program, has avoided significant new violations oflaw unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. Upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of a diversion program, 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 (e) and (f). The divertee who successfully completes the diversion program may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified in subdivision (e).

(e) Regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request. Notwithstanding subdivision (d), this section does not relieve the divertee who successfully completes diversion pursuant to this section of his or her obligation to disclose the arrest in a response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830. The divertee shall be advised of the requirements ofthis subdivision upon the successful completion of diversion.

(f) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records created as a result 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. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of arrests for which the defendant was granted diversion under this section.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: June 12, 2018
Counsel: Sandy Uribe

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

SB 439 (Mitchell) - As Amended June 6, 2018

SUMMARY: Prohibits the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or rape by force. Specifically, **this bill:**

1) Establishes 12 years of age as the minimum age for which the juvenile court has jurisdiction to adjudge a minor as a ward of the court for either a crime or a status offense,[1] except as specified.

2) Allows a child under the age of 12 to be brought under the jurisdiction of the juvenile court when it is alleged that the child has committed murder or rape by force, violence, or threat of great bodily harm.

3) States legislative intent that counties use the least restrictive means of intervention, and avoid intervention whenever possible, when a child under the age of 12 engages in conduct that would otherwise bring him or her under the jurisdiction of the juvenile court.

4) Provides that, on and after January 1, 2020, when a minor under the age of 12 comes to the attention of law enforcement because his or her conduct constitutes a crime or a status offense, the minor must be released to his or her parent, guardian, or caregiver.

5) Requires counties to develop a process for determining the least restrictive responses that may be used instead of, or in addition to, the release of the minor to his or her parent, guardian, or caregiver.

EXISTING LAW:

1) Provides that any person who is under 18 years of age when he or she violates any law defining a crime is subject to the jurisdiction of the juvenile court and to adjudication as ward. (Welf. & Inst. Code,§ 602.)

2) Provides that any person who is under 18 years of age who habitually refuses to obey the orders of his or her parents, who violates age curfews, or who is a habitual truant, is subject to the jurisdiction of court as ward. (Welf. & Inst. Code, § 601.)

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[1] Status offenses involve conduct which would not be a crime if committed by an adult, such as curfew violations and truancy.

3) Provides that children under the age of 14 are incapable of committing crimes unless there is clear proof that at the time of committing the act charged against them they knew its wrongfulness. (Pen. Code,§ 26.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "This bill would protect young children from the negative impacts of formal justice system involvement, promote their rights, health, and well-being through alternative child-serving systems, and decrease the amount of resources wasted in the juvenile justice system."

2) **Jurisdiction of the Juvenile Court:** As a general rule any person under the age of 18 who commits either a crime or a status offense falls within the jurisdiction of the juvenile delinquency court.[2] (Welf. & Inst. Code, §§ 601 & 602.) This extends to any minor alleged to have committed a crime before his or her 18th birthday, regardless of age at the time of arrest or commencement of proceedings. (Welf. & Inst. Code,§ 603.) There is no minimum age under which the juvenile court lacks jurisdiction.

   The creation of the juvenile court, now over 100 years old, was rooted in the idea that adolescents, who are not fully developed or mature, are less culpable than adults. Accordingly, the focus of the juvenile court was supposed to be rehabilitation, not punishment. (See e.g. *In re Gault* (1967) 387 U.S. 1, 15-16.) However, "There is evidence ... that there may be grounds for concern that the child [in juvenile court] receives the worst of both worlds: that he gets neither the protections accord to adults nor the solicitous care and regenerative treatment postulated for children." *(Id.* at p. 18, fn. 23, citations omitted.) In fact, many would argue that, with the exception of the right to a jury trial, a delinquency proceeding is quasi-criminal and indistinguishable from an adult criminal proceeding.

   The treatment of juveniles as equally culpable as adults clashes with emerging empirical evidence on the immaturity of adolescents with respect to both their ability to make informed and nuanced judgments about their behavior, as well as their moral development. Researchers in the science of human development generally agree that from a developmental standpoint an adolescent is not an adult. And some scholars argue that the unique nature of adolescent development affect considerations of both culpability and deterrence when measuring the value and suitability of imposing adult criminal sanctions on juveniles:

   > The culpability analysis of juvenile impulsiveness and risk-taking implicitly embraces the developmental notion that some forms of adolescent behavior are the result of a not yet fully formed ability to control impulses. In effect, young people do not have the same capacity for self-control as adults and this should be considered a mitigating factor when assessing culpability. Similarly, the proclivity of adolescents to take risks and act on a whim skews the traditional

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[2] The juvenile court also has jurisdiction over those minors who are abused, neglected, orphaned, abandoned or physically dangerous because ofa mental disorder. (See Welf. & Inst. Code, §300.) That jurisdiction is not at issue here.

> deterrence calculus for the adolescent actoL Adolescents are not likely to recognize all possible options and therefore, their preference prioritization may be completely tilted toward outcomes that they expect will provide immediate gratification but that do not actually maximize their utility.

(Jill M. Ward, *Deterrence's Difficulty Magnified: The Importance of Adolescent Development in Assessing the Deterrence Value of Transferring Juveniles to Adult Court,* (2003) 7 UC Davis Juv. L. & Pol'y 253, 267, fn. 6.)

United States Supreme Court jurisprudence has also recognized that children are different. For example, in *Roper v. Simmons* (2005) 543 U.S. 551, the Court discussed the differences between juvenile offenders and adults when it held that persons who were under the age of 18 at the time of the offense are ineligible for the death penalty. First the court noted that a lack of maturity and an underdeveloped sense of responsibility are found in youth more and more often result in impetuous and ill-considered actions and decisions. *(Tel.* at p. 569.) /\ "second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *(Ibid.)* And third,"the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." *(Id.* at p. 570.)

If it is recognized that the brain and moral development of adolescents is not as formed as that of an adult, then it stands to reason that the brain and moral development of pre-adolescents is even less so. Based on this rationale, and on the recognition that involvement the juvenile justice system can cause more harm than benefit to the minor, this bill generally limits juvenile court jurisdiction to children over the age of 12.

Yet, there are tensions in whether to address the conduct of young juvenile offenders engaged in the most serious, violent crimes (referred to as"707(b) offenses")3 through the juvenile justice system versus child protective services, or some other agency. Some would argue that the juvenile justice system provides a higher likelihood that the minor will receive services. There is also concern that without a court process that has the ability to impose sanctions, the minor will not rehabilitate.

In recognition of this tension, this bill would allow a child under the age of 12 who commits murder or rape by force, violence, or threat of great bodily injury to be subject to the jurisdiction of the juvenile court. However, there are other sex offenses which are arguably just as serious, such as forcible sodomy and forcible sexual penetration, which this bill does not take into account. As drafted, this bill sets up the inconsistent situation that if a boy under the age of 12 commits forcible intercourse against a little girl, he will be subject to the jurisdiction of the juvenile court; however, if that same boy forcibly sexually assaulted another little boy he would not be subject to juvenile court jurisdiction. This raises the question of disparate treatment.

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3 Welfare and Institutions Code section 707, subdivision (b) lists 30 offenses including: murder, arson, robbery, sex offenses committed by force, violence or threat of bodily harm, carjacking, assault with a firearm or by means likely to produce great bodily injury, torture and mayhem.

3) **Capacity:** While California currently does not have a law establishing a minimum age for juvenile court jurisdiction, current law does establish a presumption of a minimum age for the capacity to commit a crime.

   A child under the age of 14 is not capable of committing a crime in the absence of clear proof that at the time of committing the alleged act, the child knew of its wrongfulness. (Pen. Code, § 26.) This presumption shifts the burden to the prosecutor to prove that a child has capacity.

   When the issue of a child's capacity to commit a crime arises, the juvenile court holds a *Gladys R.* hearing. *(In re Gladys R.* (1970) **1** Cal.3d 855.) The standard of proof is clear and convincing evidence, rather than proof beyond a reasonable doubt. *(In re Manuel L.* (1994) 7 Cal.4th 229, 234.)

   In determining whether the child knew of the wrongfulness, the court must consider the child's age, experience, and understanding . Additionally, the minor's knowledge of the wrongfulness of the act may be inferred from the circumstances, such as the method of its commission or concealment of the act. *(In re Marven* C. (1995) 33 Cal.App.4th 482, 487; *In re James B.* (2003) 109 Cal.App.4th 826.) There are no statutory restrictions on presenting psychiatric testimony on the issue of showing whether the child knew of the act's wrongfulness. (Pen. Code,§ 21, subd. (b).)

4) **Department of Justice Data on the Juvenile Justice System:** The California Department of Justice (DOJ) publishes an annual report on juvenile justice in California. The report includes data on the number of arrests, referrals to probation, petitions filed, and disposition. (See https://openjustice.do j.ca.gov/resources/publications.)

   The DOJ's 2016 report includes the following data: In 2016, there were 804 arrests made of children who were under 12 years of age. *(Id.* at p. 56.) Of the minors under 12 who were arrested, 279 were arrested for felonies, 453 were arrested for misdemeanors, and 72 were arrested for status offenses. *(Ibid.)* The most common type of arrests for this population was assault and battery offenses. There were 95 arrests for violent felonies. *(Id.* at. p. 57.) The violent-felony arrests for children under 12 consisted of 3 arrests for rape, 23 for robbery, 69 for assault.[4] No children under 12 were arrested for homicide or for kidnapping in 2016. (p. 59.)

   Of those 804 arrests for children under 12 years of age, 587 children were referred to the probation department, 205 were counseled and released. and 12 were turned over to another agency. (p. 64.) There were 652 children under 12 subject to detention in 2015. This resulted in 85 petitions filed. The rest of the cases were either closed at intake, handled via informal probation, diversion, transferred, or handled traffic court. (p. 72.)

5) **Argument in Support:** According to the *National Center for Youth Law,* a co-sponsor of this bill, "We support the establishment of a minimum age of juvenile delinquency

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[4] The DOJ data for 2016 also shows 15 arrests for lewd or lascivious acts and 4 for other sex crimes, but they are not counted in the violent felony arrests. (p. 59.)

jurisdiction for the following reasons:

"1. Formal justice processing is harmful to children's health and development. exposing them unnecessarily to a system that they do not fully understand;
2. Early-age involvement in the justice system is increasingly rare and characterized by high rates of case dismissal, meaning that counties are spending wastefully on these cases;
3. Early-age court processing in California is beset with geographic, racial, and ethnic disparities;
4. There is increasing national and international support for minimum age laws;
5. Alternative services outside of the juvenile justice system- such as community-and-family-based health and mental health, education, and child welfare services- can better meet the needs of young children while maintaining public safety."

6) **Argument in Opposition:** According to the *Chief Probation Officers of California* (CPOC), "[T]his bill does not take into account the individualized circumstances or needs of a minor under 12 and what services, treatment, and setting might be most suitable for them in order to best serve their needs and balance the public safety.

"Due to the individualized nature of working with all youth, we are concerned that by having this apply universally to all youth under 12 years of age, including those who have committed serious or violent 707(b) offenses, the bill would limit the juvenile court's ability to determine the most appropriate response and treatment for youth who are believed to have committed a 707(b) offense that also balances those needs with the public's safety. We believe that for youth who are alleged to have committed a 707(b) offense, the delinquency court should have a mechanism to review the case to determine an appropriate response and how best to address the actions of the youth. Currently, there are very few youth under 12 in the delinquency system that fall under this category and a prohibition against delinquency courts and probation departments from serving these youth will likely be a disadvantage to the youth, their families, and possibly victims and our communities."

7) **Prior Legislation:** SB 1322 (Mitchell), Chapter 654, Statutes of 2016, decriminalized prostitution for those under 18 years of age, but permitted a minor to be taken into temporary custody for that offense under limited circumstances.

REGISTERED SUPPORT/ OPPOSITION:

Support

Anti-Recidivism Coalition (Co-Sponsor)
Children's Defense Fund, California (Co-sponsor)
Center on Juvenile and Criminal Justice (Co-sponsor)
National Center for Youth Law (Co-sponsor)
W. Haywood Burns Institute (Co-Sponsor)
Youth Justice Coalition (Co-sponsor)
Alameda County Office of Education
Alliance FOR Boys and Men of Color
American Academy of Pediatrics, California
American Civil Liberties Union of California
Arts for Incarcerated Youth Network

Asian Americans Advancing Justice, California
Aspiranet
Bend the Arc
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Catholic Conference, Inc.
California Public Defenders Association
California School-Based Health Alliance
Common Sense Kids Action
Communities United for Restorative Youth Justice
Compton Unified School District
Contra Costa County Defender Association
Courage Campaign
Drug Policy Alliance
Ella Baker Center for Human Rights
Everychild Foundation
Fair Chance Project
Fathers and Families of San Joaquin
Focus Forward
Friends Committee on Legislation of California
Further the Work
Healing Dialogue and Action
League of Women Voters of California
Legal Services for Prisoners with Children
Motivating Individual Leadership for Public Advancement
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Institute for Criminal Justice Reform
National Juvenile Justice Network
Pacific Juvenile Defender Center
Prison Law Office
Public Counsel
Reentry Solutions Group
Root and Rebound
San Francisco Public Defender
Silicon Valley De-Bug
Society for Adolescent Health and Medicine
The Children's Initiative
Urban Peace Institute
Western Center on Law and Poverty
Youth Law Center
#Cut50

60 private individuals

Opposition

California District Attorneys Association
California Police Chiefs Association

Chief Probation Officers of California
San Diego County District Attorney

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

Date of Hearing: June 12, 2.018
Counsel: David Billingsley

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

SB 746 (Portantino)- As Amended May 22, 2018
As Proposed to be Amended in Committee

SUMMARY: Establishes procedures for return of ammunition that has been seized by law enforcement or has been transferred to a licensed firearms dealer because of a temporary prohibition on ammunition possession. Requires eligibility to possess ammunition be established before ammunition can be returned. Requires the Department of Justice (DOJ) to conduct inspections of firearm dealers at least every three years, as·specified. **Specifically ,** this bil1:

1) Makes the procedure for a court or law enforcement agency to return a seized firearm applicable to ammunition.

2) Makes the procedure for a licensed firearm dealer to return a firearm that has been transferred to them because the person is temporarily prohibited from possessing a firearm applicable to ammunition.

3) Allows a person that owns ammunition or ammunition feeding device that is in the custody of a court or law enforcement agency to sell those items to a licensed firearm dealer, ammunition vendor, or third party that is not prohibited from possessing such items.

4) Directs DOJ to annually review and adjust the fees necessary to process applications to return firearms, ammunition feeders, or ammunition seized by a court of law enforcement agency.

5) Allows a person temporarily prohibited from possessing ammunition to transfer ammunition to an ammunition vendor, in addition to a licensed firearms dealer.

6) Specifies that any ammunition in the possession of a firearms dealer or ammunition vendor because of a temporary prohibition of ammunition possession, not be returned to the owner after the prohibition has expired, unless the owner meets the eligibility requirements necessary to purchase ammunition.

7) Clarifies that a person who has an outstanding warrant for a felony or rn isdi.:mcanor can transfer his or her firearms to a licensed firearms dealer, for the duration of the prohibition, as specified.

8) Requires the DOJ to conduct inspections of firearm dealers at least every three years, with the exception of a dealer whose place of business is located in a jurisdiction that has adopted an inspection program.

9) Allows DOJ to inspect a dealer who is exempt from mandatory inspections.

1 0) Makes Legislative findings and declarations.

EXISTING LAW:

1) States that any person who has been convicted of, or has an outstanding warrant for, a felony and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. (Pen. Code, § 29800.)

2) Provides that it is an alternate felony/misdemeanor for any person who has been convicted of, or has an outstanding warrant for, a specified misdemeanor, within 10 years of the conviction, to own, purchase, receive, or have in his or her possession or under custody or control of any firearm. (Pen. Code,§ 29805.)

3) Requires the court, at the time a judgment is imposed which prohibits a person from owning, purchasing, receiving, possessing, or having custody or control of any firearm, to provide on a form supplied by the Department of Justice, a notice to the person informing him or her of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. (Pen. Code,§ 29810, subd. (a).)

4) Provides that every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction or a protective order, as specified, is guilty of a public offense, punishable by up to one year in county jail or 16 months, two or three years in the state prison, a fine of up to $1,000, or both. (Pen. Code,§ 29825, subd. (a).)

5) Specifies that every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction or a protective order, as specified, is guilty of a public offense, punishable by up to one year in a county jail, a fine ofup to $1,000, or both. (Pen. Code,§ 29825, subd. (b).)

6) Provides that the Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time ofreceipt of the order. (Pen. Code,§ 29825, subd. (d).)

7) Specifies that it is a misdemeanor to person to own or possess a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and the person shall be prohibited from owning or possessing a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code 18205.)

8) States that a person who is prohibited from owning or possessing a firearm may tran for ur cause to be transferred, any firearm or firearms in his or her possession, or of which he or she is the owner, to a licensed firearms for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm will expire on a date specified in the court order. (Pen. Code, § 29830, subd. (a).)

9) Allows a firearms dealer who stores a firearm to charge the owner a fee for the storage of the firearm or firearms. (Pen. Code,§ 29830, subd. (b).)

10) Requires a firearms dealer who stores a firearm to notify the DOJ of the date that the firearms dealer has taken possession of the firearm or firearms. (Pen. Code,§ 29830, subd. (d).)

11) States that any firearm that is returned by a dealer to the owner of the firearm section shall be returned in accordance with requirements for delivery of a firearm. (Pen. Code. 29830. subd. (d).)

12) Allows a person who is otherwise prohibited from possessing a firearm to possess the firearm if all of the following conditions are met:

    a) The person found the firearm or took the firearm from a person who was committing a crime against the person who found or took the firearm;

    b) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law;

    c) If the firearm was transported to a law enforcement agency, it was transported in a specified manner; and,

    d) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law. (Pen. Code, § 29850.)

13) Specifies that any person who claims ownership to any firearm that is in the custody of a court or law enforcement agency and who wishes to have the firearm returned shall make application for a determination by DOJ as to whether the applicant is eligible to possess a firearm. (Pen. Code, § 33850, subd. (a).)

14) States that a law enforcement agency or court that has taken custody of any firearm may return the firearm to any individual unless specified requirements are satisfied. (Pen. Code, § 33855, subd. (a).)

15) Provides that if a law enforcement agency determines that a person is the legal owner of any firearm deposited with the agency, that person is prohibited from possessing any firearm, and that the firearm is an otherwise legal fiream1, the person is entitled to sell or transfer the firearm to a licensed dealer. (Pen. Code,§ 33870.)

16) Allows persons prohibited from owning or possessing a firearm pursuant provisions of law to transfer any firearm or firearms in his or her possession , or of which he or she is the owner, to a licensed firearms dealer for the duration of the prohibition if the prohibition on owning or possessing the firearm will expire on a date specified in the court order. (Pen. Code, § 11106.)

17) Requires a firearms dealer who stores a firearm under these circumstances to notify DOJ or the date that the dealer has taken possession of the firearm, and requires the Attorney General

to maintain a record of this information. (Pen. Code, § 11106.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "I am carrying this legislation with the input of the Department of Justice and others. By way of background in 2013 the Legislature passed and the Governor signed into law AB 539 (Pan) which dealt with creating additional options for persons who became prohibited from possessing guns to dispose of their guns without legal penalty.

"AB 539 provided that in lieu of surrendering or otherwise transferring ownership of firearms where persons were prohibited, AB 539 allowed persons subject to various temporary prohibitions to store their firearms with a state licensed gun dealer. Under that process DOJ is notified that the items are surrendered [if guns], and the return of the gun is subject to DROS with registration, etc. AB 539 as drafted was supposed to apply to all temporary prohibitions.

"In 2015, after the GYRO process was enacted in 2014, your AB 950 allowed a person, who is subject to a GYRO to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. AB 950 also allowed if the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer.

" AB 950 additionally provided for the transfer of ammunition to a licensed firearms dealer by any person who is prohibited from owning or possessing ammunition in the case of temporary prohibitions.

"Last year the Legislature passed AB 103 and SB 112 which were both Budget Implementation Bills and therefore took effect when the Governor signed them into law. AB 103 dealt with the issue of firearms [and ammunition] prohibitions for persons with outstanding warrants for persons - who if convicted of that offense - could not possess firearms, ammunition, or ammunition accessories by prohibiting them from possessing the same during the prohibition. That issue had to be addressed because of an FBI and BATF dispute over whether persons with outstanding warrants were prohibited persons.

"At the time AB 103 was under consideration there were concerns raised as to notice and relinquishment procedures. The notice issue was dealt with in SB 112 which became law last September. As to relinquishment, the Office of the Attorney General has opined - albeit informally - that the immunity/defense created by AB 539 (Pan) for relinquishment applies to the "warrant" provision which should meet that concern.

"SB 746 codifies Attorney General Becerra's opinion and applies the provisions in AB 539 to allow relinquishment of fiream1s and ammunition to a dealer for storage while the person who is subject to the warrant prohibition or *any other* temporary prohibition.

"Two, in terms of ammunition returns, AB 950 applied AB 539 to ammunition returns. The exact process for doing so in current law is unclear because SB 1235 has not taken effect.

The bill is being amended to make clear that dealer returns are subject to SB 1235 procedures.

"Third, because AB 950 applies to ammunition in law enforcement custody and an existing procedure called the Law Enforcement Gun Release process does not apply to ammunition and given the logistics it's not clear how it would be under current law. SB 746 imposes the same basic LEGR process on ammo returns as is the case with gun returns. As to ammunition accessories, prohibited persons cannot have speed loaders or any magazine under current law courtesy of a 1994 law sponsored by Dan Lungren."

2) **Surrender of Firearms and Ammunition:** Prior to the enactment of SB 539 (Pan), Chapter 739, Statutes of 2013, a person who was prohibited from owning or possessing a firearm was entitled to sell or transfer his or her firearm to a licensed dealer if the firearm was deposited with a law enforcement agency and the agency determined that a person was the legal owner and the firearm is otherwise legal. (Pen. Code § 33870.) The ability to transfer firearms to dealers under the law did not specify whether an owner who was temporarily prohibited from possessing a firearm had the ability to take back the firearm when the prohibition ended. SB 539 allowed firearms to be transferred to a licensed firearm dealer when a person was temporarily prohibited from possessing a firearm in situations such as restraining order.

AB 1014 (Skinner), Chapter 872, Statutes of 2014, enacted the gun violence restraining order law to address concerns related to mental health and firearms possession. Under the provisions of AB 1014, persons subject to gun violence restraining orders were required to either sell their weapons and ammunition or surrender those firearms and ammunition to law enforcement. AB 950 (Melendez), Chapter 205, Statutes of 2015 provided the option to transfer the weapon or ammunition to a licensed firearm dealer until the person was a in a position to legally repossess the firearm. In order to repossess the firearm, the person is subject to the same checks as if they were initially purchasing a weapon. SB 1325 (De Leon), Chapter 55, Statutes of 2016, requires ammunition purchasers to be screened at point to purchase for any prohibitions on possessing ammunition. This bill specifies that the ammunition transferred to a firearm dealer or ammunition vendor can be returned at the expiration of the prohibition on ammunition possession, but that the owner must be screened for eligibility to possess the ammunition in the same manner as if they were conducting a purchase.

Under current law, if a firearm is in the possession of a court or law enforcement agency the person seeking to resume ownership of the firearm must get a determination of eligibility to own a firearm from DOJ before they court or law enforcement agency can release the firearm to the person. This bill would apply that same process to ammunition in the possession of a court or law enforcement agency.

AB 103 (Budget), Chapter 17, Statutes of 2017 specified that a person with an outstanding warrant for a felony, or specified misdemeanors, is prohibited from owning or possessing a firearm.

This bill clarifies that persons who are prohibited from possessing firearms and ammunition due to an active warrant following the passage of AB 103 may transfer the firearm to a firearm dealer in the same manner as is allowed for other temporary prohibitions on firearm possession.

3) **Mandatory Inspections of Gun Dealers by DOJ:** Current law allows DOJ to inspect licensed firearms dealers. These inspections are meant ensure that firearms dealers are following the regulatory requirements governing firearm sales. This bill would require DOJ to conduct inspections of firearm dealers at least every three years, with the exception of a dealer whose place of business is located in a jurisdiction that has adopted an inspection program. Presumably, more DOJ inspections would correlate to increased compliance with existing regulations. However, the background material provided by the author did not specifically state why this statutory change is needed. It is not clear how such a mandate would affect DOJ's staffing and resources. Current law authorizes DOJ to charge dealers an annual fee, not to exceed $115 to cover the cost of maintaining the list of licensed firearm dealers, including the costs of inspections. A firearms dealer that is located in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law is exempt from the portion of the fee that relates to the cost of DOJ inspections.

4) **Argument in Support:** According to the *California Chapters of the Brady Campaign,* "Under existing law, a person who has an outstanding warrant for a felony or certain misdemeanors is prohibited from purchasing, owning, or possessing a firearm. The person must relinquish his or her firearms by either surrendering them to local law enforcement or selling them to a licensed firearm dealer. SB 746 would add the option of transferring firearms and ammunition to a licensed firearm dealer for storage during the duration of the prohibition.

   "In recent years, legislation has been enacted to allow dealer storage as a relinquishment option for temporary firearm prohibitions, including those due to protective orders, domestic violence restraining orders and gun violence restraining orders. SB 746 would make the relinquishment options for a prohibition due to an outstanding warrant consistent with other temporary prohibitions. In all cases, firearm dealers must notify the California Department of Justice when they have taken possession of a gun and again when it is returned. Additionally, a dealer may charge the owner a reasonable fee for the storage of firearms and ammunition.

   "This bill presents a reasonable alternative for the relinquishment of firearms for a specified period due to an outstanding warrant that carries a prohibition. To the extent that this option facilitates the swift and certain removal of firearms, public safety is enhanced. Additionally, the state benefits from the person not falling into the Armed Prohibited Persons System (APPS) and adding to the backlog. For these reasons, the California Brady Campaign supports SB 746."

5) **Argument in Opposition:** According to the *National Shooting Sports Foundation, Inc.,* "With specified exceptions for dealers located in a local jurisdiction that has adopted its own inspection program, the bill would require that the Department of Justice (DOJ) conduct inspections of licensed firearms dealers at least once every 3 years.

   "The firearms industry is one of the most heavily regulated industries in the country, regulated at both the federal and state level.

   "Current California law already allows the DOJ to perform inspections of firearms dealers.

   "By requiring that all dealers be inspected by DOJ at least every three years, the department would no longer be able to prioritize its inspection schedule as it deems best, and the bill would thus be detrimental to its inspection planning.

   "The requirements of SB 746 would also put a strain on DOJ's resources.

"The current fee imposed by DOJ is $95, but by mandating that DOJ perform inspections every three years, this fee would likely increase to the maximum amount of $115.

"SB 746 would do nothing to increase public safety, but it would be a burden not only for the California's Department of Justice, but also for law-abiding California firearms retailers."

6) Related Legislation:

a) AB 2817 (Santiago), would have authorized the temporary transfer of a firearm that was voluntarily made to prevent a suicide. AB 2817 was held in the Assembly Appropriations Committee.

b) AB 2888 (Ting), would allow an employer, co-worker, mental health practitioner, or an employee of a secondary or post- secondary school to file a petition requesting the court to issue a GVRO. AB 2888 is awaiting hearing in the Senate Public Safety Committee.

7) Prior Legislation:

a) AB 103 (Budget), Chapter 17, Statutes of 2017, specified that a person with an outstanding warrant for a felony, or specified misdemeanors, is prohibited from owning or possessing a firearm.

b) SB 112 (Budget & Fiscal Review), Chapter 363, Statutes of 2017, stated that criminal liability for owning or possessing a firearm when prohibited because of an outstanding warrant requires that the person be aware of the warrant.

c) AB 950 (Melendez), Chapter 205, Statutes of 2015, allows a person, who is subject to a gun violence restraining order (GVRO), to transfer his or her fireaims or ammunition to a licensed firearms dealer for the duration of the prohibition.

d) AB 539 (Pan), Chapter 739, Statutes of 2013, allows a person who is temporarily prohibited from owning or possessing a firearm to transfer firearms in his or her possession or ownership to a licensed firearms dealer for storage during the period of prohibition.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign

Opposition

National Shooting Sports Foundation, Inc.

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

Amended Mock-up for 2017-2018 SB-746 (Portantino (S}}

Mock-up based on Version Number 96 -Amended Assembly 5/22/18
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. The Legislature hereby finds and declares both of the following:

(a) The intent expressed in the Safety for All Act of 2016 is to safeguard the ability of law-abiding, responsible Californians to own and use firearms for lawful means while requiring background checks for ammunition purchases in the manner required for firearm purchases so that neither firearms nor ammunition get into the hands of dangerous individuals.

(b) Insofar as this act amends the Safety for All Act of 2016, the amendments made by this act are consistent with and further that intent. The amendments ensure that ammunition and ammunition feeding devices in the possession of a court or law enforcement agency will only be transferred to a third party after that party undergoes a background check to determine that he or she is not prohibited from acquiring or having ammunition or ammunition feeding devices with appropriate records maintained of the transfer.

SEC. 2. Section 16150 of the Penal Code is amended to read:

16150. (a) As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.

(b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.

SEC. 3. Section 26720 of the Penal Code is amended to read:

26720. (a) Except for a dealer specified in subdivision (c), the Department of Justice shall conduct inspections of dealers at least every three years to ensure compliance with ***tile provisions listed in*** Section 16575.

(b) The department may assess an annual fee, not to exceed one hundred fifteen dollars ($115), to cover the reasonable cost of maintaining the list described in Section 26715, including the cost of inspections.

(c) A dealer whose place of business is located in a jurisdiction that has adopted an inspection program to ensure compliance with firearms law is exempt from that portion of the department's fee that relates to the cost of inspections. The applicant is responsible for providing evidence to the department that the jurisdiction in which the business is located has the inspection program. The department may inspect a dealer who is exempt from mandatory inspections under subdivision (a) to ensure compliance with ***the provisions listed in*** Section 16575.

SEC. 4. Section 29830 of the Penal Code is amended to read:

29830. (a) A person who is prohibited from owning or possessing a firearm, ammunition feeding device, or ammunition pursuant to any law, may transfer or cause to be transferred, any firearm, ammunition feeding device, or ammunition in his or her possession, or of which he or she is the owner, to a firearms dealer***, licensed pursuant to Section 26700 to 26915, inclusive,*** or ***may transfer ammunition to a*** ammunition vendor, as applicable, licensed pursuant to Section 26700 to 26915**,** inclusive, or Section 30385 to 30395, inclusive, for storage during the duration of the prohibition, if the prohibition on owning or possessing the firearm, ammunition feeding device, or ammunition will expire on a specific ascertainable date, whether or not specified in the court order, or pursuant to Section 29800, 29805, or 29810.

(b) A firearms dealer or ammunition vendor who stores a firearm, ammunition feeding device, or ammunition pursuant to subdivision (a), may charge the owner a reasonable fee for the storage of the firearm, ammunition feeding device, or ammunition.

(c) A firearms dealer or ammunition vendor who stores a firearm, ammunition feeding device, or ammunition pursuant to subdivision (a) shall notify the Department of Justice of the date that the firearms dealer or ammunition vendor has taken possession of the firearm, ammunition feeding device, or ammunition.

(d) Any firearm that is returned by a dealer to the owner of the firearm pursuant to this section shall be returned in accordance with the procedures set forth in Section 27540 and Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6.

(e) Any ammunition that is returned by a firearms dealer or ammunition vendor to the owner of the ammunition pursuant to this section shall be returned in accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

SEC. 5. Section 33850 of the Penal Code is amended to read:

33850. (a) Any person who claims title to any firearm, ammunition feeding device, or ammunition that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm, ammunition feeding device, or ammunition returned shall make application for a determination by the Department of Justice as to whether the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition. The application shall be submitted electronically via the California Firearms Application Reporting System (CFARS) and shall include the following:

(1) The applicant's name, date and place of birth, gender, telephone number, and complete address.

(2) Whether the applicant is a United States citizen. If the applicant is not a United States citizen, the application shall also include the applicant's country of citizenship and the applicant's alien registration or I-94 number.

(3) If the seized property is a firearm, the firearm's make, model, caliber, barrel length, type, country of origin, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, there shall be a place on the application to note that fact.

(4) For residents of California, the applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles. For nomesidents of California, a copy of the applicant's military identification with orders indicating that the individual is stationed in California, or a copy of the applicant's valid driver's license from the applicant's state of residence, or a copy of the applicant's state identification card from the applicant's state of residence. Copies of the documents provided by non-California residents shall be notarized.

(5) The name of the court or law enforcement agency holding the firearm, ammunition feeding device, or ammunition.

(6) The signature of the applicant and the date of signature.

(7) Any person furnishing a fictitious name or address or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4), shall be guilty of a misdemeanor.

(b) A person who owns a firearm that is in the custody of a court or law enforcement agency and who does not wish to obtain possession of the firearm, and the firearn1 is an otherwise legal firearm, and the person otherwise has right to title of the firearm, shall be entitled to sell or transfer title of the firearm to a licensed dealer or a third party that is not prohibited from possessing that firearm. Any sale or transfer to a third party pursuant to this subdivision shall be conducted pursuant to Section 27545.

(c) A person who owns an ammunition feeding device or ammunition that is in the custody of a court or a law enforcement agency and who does not wish to obtain possession of the ammunition or ammunition feeding device, and the ammunition feeding device or ammunition is otherwise legal, shall be entitled to sell or otherwise transfer the ammunition feeding device or ammunition to a licensed firearm dealer or ammunition vendor or a third party that is not prohibited from possessing that ammunition feeding device or ammunition. Any sale or other transfer of ammunition to a third party pursuant to subdivision (b) shall be conducted through an ammunition vendor **in** accordance with the procedures set forth in Article 4 (commencing with Section 30370) of Chapter 1 of Division 10.

(d) Any person furnishing a fictitious name or address, or knowingly furnishing any incorrect information or knowingly omitting any information required to be provided for the application, including any notarized information pursuant to paragraph (4) of subdivision (a), is punishable as a misdemeanor.

SEC. 6. Section 33855 of the Penal Code is amended to read:

33855. A law enforcement agency or court that has taken custody of any firearm, ammunition feeding device, or ammunition shall not return the firearm, ammunition feeding device, or ammunition to any individual unless all of the following requirements are satisfied:

(a) The individual presents to the agency or court notification of a determination by the department pursuant to Section 33865 that the person is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) If the seized property is a firearm and the agency or court has direct access to the Automated Firearms System, the agency or court has verified that the firearm is not listed as stolen pursuant to Section 11108, and that the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.

(c) If the firearm has been reported lost or stolen pursuant to Section 11108, a law enforcement agency shall notify the owner or person entitled to possession pursuant to Section 11108.5. However, that person shall provide proof of eligibility to possess a firearm pursuant to Section 33865.

(d) This section does not prevent the local law enforcement agency from charging the rightful owner or person entitled to possession of the firearm the fees described in Section 33880. However, an individual who is applying for a background check to retrieve a firearm that came into the custody or control of a court or law enforcement agency pursuant to Section 33850 shall be exempt from the fees in Section 33860, provided that the court or agency determines the firearm was reported stolen to a law enforcement agency prior to the date the firearm came into custody or control of the court or law enforcement agency, or within five business days of the firearm being stolen from its owner. The court or agency shall notify the Department of Justice of this fee exetnption in a manner prescribed by the department.

SEC. 7. Section 33860 of the Penal Code is amended to read:

33860. (a) The Department of Justice shall establish a fee of twenty dollars ($20) per request for return of a firearm, ammunition feeding device, or any quantity of ammunition plus a three-dollar ($3) charge for each additional firearm being processed as part of the request to return a firearm, to cover its reasonable costs for processing applications submitted pursuant to this chapter.

(b) The fees collected pursuant to subdivision (a) shall be deposited into the Dealers' Record of Sale Special Account.

(c} The department shall annually review and shall adjust the fees specified in subdivision (a), if necessary, to fully fund, but not to exceed the reasonable costs of processing applications pursuant to this section.

SEC. 8. Section 33865 of the Penal Code is amended to read:

33865. (a) When the Department of Justice receives a completed application pursuant to Section 33850 accompanied by the fee required pursuant to Section 33860, it shall conduct an eligibility check of the applicant to determine whether the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition.

(b) The department shall have 30 days from the date of receipt to complete the background check, unless the background check is delayed by circumstances beyond the control of the department. The applicant may contact the department via the California Firearms Application Reporting System (CFARS) to inquire about the reason for a delay.

(c) If the department determines that the applicant is eligible to possess the firearm, ammunition feeding device, or ammunition, the department shall provide the applicant with written notification that includes the following:

(1) The identity of the applicant.

(2) A statement that the applicant is eligible to possess a firearm, ammunition feeding device, or ammunition.

(3) If applicable, a description of the firearm by make, model, and serial number, provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted.

(d) The department shall enter a record of the firearm into the Automated Firearms System (AFS), provided, however, that if the firearm is not a handgun and does not have a serial number, identification number, or identification mark assigned to it, that fact shall be noted in AFS.

(e) If the department denies the application, and the firearm is an otherwise legal firearm, the department shall notify the applicant of the denial and provide a form for the applicant to use to sell or transfer the firearm to a licensed dealer.

(f) If the department denies the application, the applicant shall receive notification via CFARS from the department explaining the reason for the denial and information regarding the appeal process.

SEC. 9. Section 33870 of the Penal Code is amended to read:

33870. (a) If a law enforcement agency determines that the applicant is the legal owner of any firearm ammunition feeding device, or ammunition deposited with the agency, that the applicant is prohibited from possessing any firearm, ammunition feeding device, or ammunition, and that the firearm, ammunition feeding device, or ammunition is otherwise legal, the applicant shall be entitled to sell or transfer the firearm, ammunition feeding device, or ammunition to a licensed firearms dealer, or licensed ammunition vendor, as applicable. If a law enforcement agency determines that the applicant is prohibited from owning or possessing any firearm, ammunition feeding device, or ammunition and the prohibition will expire on a specific ascertainable date, whether or not that date is specified in a court order, the applicant shall be entitled to have the firearm, ammunition feeding device, or ammunition stored by a licensed firearms dealer or licensed ammunition vendor, as applicable, for the duration of the prohibition period pursuant to Section 29830.

(b) If the firearm, ammunition feeding device, or ammunition has been lost or stolen, it shall be restored to the lawful owner pursuant to Section 11108.5 upon the owner's identification of the property, proof of ownership, and proof of eligibility to possess a firearm, ammunition feeding device, or ammunition pursuant to Section 33865.

(c) This section does not prevent the local law enforcement agency from charging the rightful owner of the property the fees described in Section 33880.

SEC. 10. Section 33875 of the Penal Code is amended to read:

33875. Notwithstanding any other provision of law, no law enforcement agency or court shall be required to retain any firearm, ammunition feeding device, or ammunition for more than 180 days after the owner has been notified by the court or law enforcement agency that the property has been made available for return. An unclaimed firearm, ammunition feeding device, or ammunition may be disposed of after the 180-day period has expired.

SEC. 11. Section 33880 of the Penal Code is amended to read:

33880. (a) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of any firearm, ammunition feeding device, or ammunition.

(b) The fee under subdivision (a) shall not exceed the actual costs incurred for the expenses directly related to taking possession of any firearm, ammunition feeding device, or ammunition, storing it, and surrendering possession of it to a licensed firearms dealer or to the owner.

(c) The administrative costs described in subdivisions (a) and (b) may be waived by the local or state agency upon verifiable proof that the firearm, ammunition feeding device, or ammunition was reported stolen at the time it came into the custody or control of the law enforcement agency.

(d) The following apply to any charges imposed for administrative costs pursuant to this section:

(1) The charges shall only be imposed on the person claiming title to the firearm, ammunition feeding device, or ammunition.

(2) Any charges shall be collected by the local or state authority only from the person claiming title to the firearm, ammunition feeding device, or ammunition.

(3) The charges shall be in addition to any other charges authorized or imposed pursuant to this code.

(4) A charge shall not be imposed for a hearing or appeal relating to the removal, impound, storage, or release of any firearm, ammunition feeding device, or ammunition, unless that hearing or appeal was requested in writing by the legal owner of the property. In addition, the charge may be imposed only upon the person requesting that hearing or appeal.

(e) Costs for a hearing or appeal related to the release of any firearm, ammunition feeding device, or ammunition shall not be charged to the legal owner who redeems the property, unless the legal owner voluntarily requests the poststorage hearing or appeal. A city, county, city and county, or state agency shall not require a legal owner to request a poststorage hearing as a requirement for release of the firearm, ammunition feeding device, or ammunition to the legal owner.

SEC. 12. Section 33885 of the Penal Code is amended to read:

33885. In a proceeding for the return of any firearm, ammunition feeding device, or ammunition seized and not returned pursuant to this chapter, where the defendant or cross-defendant is a law enforcement agency, the court shall award reasonable attorney's fees to the prevailing party.

SEC. 13. Section 33895 of the Penal Code is amended to read:

33895. (a) Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to this chapter.

(b) Sections 30312 and 30342 do not apply to deliveries or transfers of returns of ammunition or ammunition feeding devices by a court or law enforcement agency made pursuant to this chapter.

SEC. 14. 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 12, 2018
Chief Counsel: Gregory Pagan

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

SB 896 (McGuire) - As Amended May 25, 2018

SUMMARY: Extends the sunset date until January 1, 2024 on the state's aggravated arson statute, and increases the threshold amount of property damage required from $7 million to $7.3 million.

EXISTING LAW:

1) Provides that any person who willfully, maliciously , or deliberately, with premeditation and withintent to cause injury to one or more persons, to cause dan1age to property under circumstances likely to produce injury to one or more persons, or to cause damage to one or more structures or inhabited dwellings sets fire to, burns, or causes to be burned any residence or structure is guilty of aggravated arson, punishable by IO-years-to-life in the state prison if one or more of the following aggravating factors exist:

a) The defendant was previously convicted of arson on one or more occasions within the past 10 years.

b) The fire caused property damage and other losses in excess of $7 million; or,

c) The fire caused damage to, or the destruction of, five or more inhabited structures. (Pen. Code§ 451.5.)

2) States legislative intent that property damage provisions be reviewed within five years to consider to consider the effects of inflation on the dollar amount therein. For that reason, these provisions shall only remain in effect until January 1, 2014. (Pen. Code,§ 451.5 subd. (a)(2)(B).)

3) Provides that arson that causes great bodily injury is a felony, punishable by imprisonment in the state prison for five, seven, or nine years. (Pen. Code,§ 451 subd, (a).)

4) Provides that arson of an inhabited dwelling or inhabited structure is a felony, punishable by imprisonment in the state prison for three, five, or eight years. (Pen. Code § 451 subd. (b).)

5) Provides that arson of a forestland or structure is a felony punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code§ 451 subd. (c).)

6) Provides that arson of property is a felony, punishable by imprisonment in the state prison for 16 months, two or three years. (Pen. Code § 451 subd. (d).)

7) Provides that any person convicted of arson shall be punished by a three, four, or five year enhancement if one or more of the following circumstances are found to be true:

a) The defendant was previously convicted of felony arson;

b) A peace officer, firefighter, or other emergency persom1el suffered great bodily injury;

c) The defendant proximately caused great bodily injury to more than one victim in a single incident;

d) The defendants proximately caused multiple structures to burn; or,

e) The defendants committed arson by use of a device designed to accelerate the fire, or delay ignition. (Pen. Code § 451.1.)

8) Provides that a person is guilty of unlawfully causing a fire when he or she recklessly sets fire to or causes to be burned any structure, forestland, or property:

a) Unlawfully causing a fire that causes great bodily injury is a felony, punishable by imprisonment in the state prison for two, four, or six years , or by imprisonment in the county jail not to exceed one year, or by a fine, or by both imprisonment and a fine;

b) Unlawfully causing a fire that causes an inhabited structure or property to burn is a felony, punishable by imprisonment in the state prison for two, three, or four years, or by imprisonment in the county jail not to exceed one year, or by a fine, or by both imprisonment and a fine;

c) Unlawfully causing a fire of a structure or forestland is a felony punishable by imprisonment in the state prison for 16 months, two, or three years, or by imprisonment in the county jail not to exceed six months, or by a fine, or by both imprisonment and a fine; or,

d) Unlawfully causing a fire of property is a misdemeanor. (Pen. Code§ 452.)

9) Provides that possession of an incendiary with the intent to set a fire is punishable by 16 months, two or three years in a county jail, or in a county jail not exceeding one year. (Pen. Code§ 453.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "California is facing a new reality. The size and scope of wildland fire events are getting worse and more destructive. The unprecedented devastation that occurred during the October firestorm in Northern California is now ranked as the most deadly and destructive in America, and the Thomas Fire in Southern California is now ranked as the largest wildland fire in our state's history. These massive blazes, exacerbated by climate change, present a real and lasting threat to every corner of the Golden State.

"In 2016, Lake County suffered through the Clayton Fire that burned tens of thousands of acres south of Lower Lake and destroyed 300 structures, which included about 189 single-family homes. A Clearlake resident was arrested and has been charged with 17 counts of arson, including aggravated arson, for igniting the Clayton Fire and could be facing over 20 years in prison.

"SB 896 will ensure law enforcement maintain a valuable deterrent and a necessary penalty to arson-caused wildland fires."

2) **Recalculation of Monetary Threshold for Aggravated Arson:** When the aggravated arson offense was enacted in 1995, the total amount of property damage and other losses was set at $5 million. Penal Code Section 451.5 stated, "It is the intent of the Legislature that this paragraph be reviewed within five years to consider the effects of inflation on the dollar amount stated herein. For that reason , this paragraph shall remain in effect only until January I, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date."

The statute must be reviewed within five years and the property and other losses adjusted for inflation. Since 1995, the aggravated arson statute's sunset has been extended and the threshold of damages has been increased four times. In its most recent sunset extension, the threshold was increased in 2009 from $6.5 million to $7 million in 2014 to account for inflation. This bill requires the threshold to be raised from $7 million to $7.3 million. According to the United States Department of Labor inflation calculator, $7 million in 2014 equates to $7.4 million in 2018.

3) **Prior Legislation:**

a) SB 930 (Berryhill), Chapter 96, Statutes of 2014, extended the sunset date until January 1, 2019 on the state's aggravated arson statute, and increases the threshold amount of property damage required from $6.5 million to $7 million.

b) AB 27 (Jeffries), Chapter 71, Statutes of 2009, extended the sunset date on the state's aggravated arson statute until January 1, 2010 and increased the threshold amount of property damage required from $5.65 million to $6.5 million.

c) AB 1907 (Pacheco), Chapter 135, Statutes of 2004, extended the sunset date on the state's aggravated arson statute until January 1, 2010 and increased the threshold amount of required property damage from $5 million to $5.65 million.

REGISTERED SUPPORT/ OPPOSITION:

Support

California State Firefighters' Association (Sponsor)
California District Attorneys Association
California State Sheriffs' Association
California Police Chiefs Association
Lake County District Attorney's Office

Lake Co.unty Sheriffs Office
San Diego County District Attorney's Office
Sonoma County Board of Supervisors

Opposition

None

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

Date of Hearing: June 12, 2018
Counsel: Sandy Uribe

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

SB 923 (Wiener) - As Amended May 25, 2018

SUMMARY: Requires law enforcement agencies and prosecutors to adopt regulations for conducting photo and live lineups with eye witnesses. Specifically, **this bill:**

I) Provides that all law enforcement agencies and prosecutorial entities shall adopt regulations for conducting photo lineups and live lineups with eyewitnesses.

2) Requires that the regulations be developed to ensure reliability and accurate suspect identifications, and comply with the following minimum requirements:

a) The eyewitness must complete a standardized form describing the perpetrator of the offense before conducting the identification procedure, and as close in time to the incident as possible;

b) The person conducting the identification procedure must use blind administration or blinded administration during the identification procedure;

c) If blind administration or blinded administration is not used, the investigator shall state in writing the reason that the presentation of the lineup was not so conducted;

d) Before an identification procedure, an eyewitness must be told that the perpetrator may not be among the persons in the lineup, that the eyewitness should not feel compelled to make an identification, and, that neither an identification nor the failure to make one will not end the investigation ;

e) The identification procedure must be composed so that all fillers generally fit the description of the suspect, and, in the case of a photo lineup, the photograph of the suspect should resemble his or her appearance at the time of the offense and not unduly stand out;

f) When conducting a photo lineup, writings or information about any previous arrest of the suspect cannot be visible to the eyewitness;

g) Only one suspect shall be included in any identification procedure;

h) All witnesses must be separated when viewing a line up;

i) Nothing shall be said to the eyewitness that might influence his or her selection of the person suspected as the perpetrator;

j) An electronic recording shall be made that includes both audio and visual representations of the identification; and,

k) If the eyewitness identifies a person he or she believes to be the perpetrator, all of the following shall apply:

i) The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification;

ii) Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness's statement of confidence level and documenting the exact words of the eyewitness; and,

iii) The ofiicer shall not at any time, validate the eyewitness' identification.

3) Defines the following terms:

a) "Blind administration" means "the administrator of an eyewitness identification procedure does not know the identity of the suspect."

b) "Blinded administration" means "the administrator of an eyewitness identification procedure may know who the suspect is, but does not know where the suspect, or his or her photo, as applicable, has been placed or positioned in the identification procedure through the use of either of the following:"

i) "An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed"; or,

ii) "The folder shuffle method, which refers to a system for conducting a photo lineup by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed."

c) "Eyewitness" means "a person whose identification of another person may be relevant in a criminal investigation."

d) "Filler" means "either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure."

e) "Identification procedure" means "either a photo lineup or a live lineup."

f) "Investigator" means "the person conducting the identification procedure."

g) "Live lineup" means "a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is

able to identify the suspect as the perpetrator."

h) "Photo lineup" means "a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator."

4) Contains legislative findings and declarations about the importance of valid eyewitness identification.

EXISTING LAW:

1) Provides that evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him or her while testifying and the following conditions are met:

a) The statement is an identification of a party or another as a person who participated in a crime or other occurrence;

b) The statement was made at a time when the crime or other occurrence was fresh in the witness' memory; and,

c) The evidence of the statement is offered after the witness testifies that he made the identification and that it was a true reflection of his opinion at that time. (Evid. Code, § 1238.)

2) Provides that the testimony of a witness concerning a particular matter is inadmissible unless he or she has personal knowledge of the matter, except to the extent that a person is giving opinion testimony as an expert witness. (Evid. Code, § 702, subd. (a).)

3) States that, except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his or her testimony at the hearing, including but not limited to any of the following:

a) His or her demeanor while testifying and the manner in which he or she testifies;

b) The character of his or her testimony;

c) The extent of his or her capacity to perceive, to recollect, or to communicate any matter about which he testifies;

d) The extent of his or her opportunity to perceive any matter about which he or she testifies;

e) His or her character for honesty or veracity or their opposites;

:f) The existence or nonexistence of a bias, interest, or other motive;

g) A statement previously made by him or her that is consistent with his or her testimony at the hearing;

h) A statement made by him or her that is inconsistent with any part of his or her testimony at the hearing;

i) The existence or nonexistence of any fact testified to by him or her;

j) His or her attitude toward the action in which he testifies or toward the giving of testimony; and,

k) His or her admission of untruthfulness. (Evid. Code, § 780.)

4) Provides that if a witness is testifying as an expert, his or her testimony in the fonn of an opinion is limited to such an opinion asis:

a) Related to a subject sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

b) Based on matter (including his or her special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him or her at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his or her testimony relates unless an expert is precluded by law from using such matter as a basis for his opinion. (Evid. Code,§ 801.)

5) Holds that a suggestive pretrial photo spread procedures may taint in-court identifications sufficient to deny the accused due process oflaw. *(Simmons vs. United States* (1968) 390 U.S. 377, 384.)

6) Holds that since it is the likelihood of misidentification that violates a defendant's right to due process, even a suggestive identification procedure does not violate due process so long as the identification possesses sufficient reliability. *(Neil vs. Biggers* (1972) 409 U.S . 188, 196.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "Compliance with best practices improves the reliability of valid eyewitness identification. Eyewitness misidentification is the leading contributor to wrongful convictions proven with DNA evidence nationally. In California eyewitness misidentification contributed to 66 wrongful convictions, including 12 out of the 13 DNA-based exonerations. Wrongful convictions involving eyewitness misidentification threatens public safety because when an innocent person is convicted the real perpetrator remains undetected and could harm others. The actual culprits in California's DNA exoneration cases went on to be convicted of 9 additional violent crimes including 6 murders

and 2 rapes.

"There is currently no statewide standard requiring law enforcement to use best practices. Although law enforcement agencies in San Francisco, Alameda, Contra Costa, and Santa Clara Counties are amongst some of the California jurisdictions that follow some of the recommended procedures.

"Nationally, 19 states have adopted state requirements for eyewitness identification procedures including Georgia, Nebraska, North Carolina, Ohio, Texas, and West Virginia. These evidence-based procedures have been endorsed by the California Commission on the Fair Administration of Justice, the National Academy of the Sciences, the U.S. Department of Justice, the American Bar Association, and the International Association of Chiefs of Police."

2) **Eyewitness Identification Procedures:** Law enforcement agencies generally use two different kinds of lineup procedures for the purpose of suspect identification: a photo lineup or a live lineup. A photo lineup is the process of showing a group of photographs to an eyewitness for the purpose of identifying or eliminating a suspect. A live lineup, sometimes called a physical lineup, involves the live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects. A third identification procedure that is sometimes used is the "showup" in which the suspect is presented singly to the crime victim. Law enforcement typically uses this procedure when a suspect is located shortly after the crime and in close proximity to the crime scene.

3) **Issues Arising From Eyewitness Identification Procedures:** Eyewitness identification is the sort of testimony that a jury finds highly persuasive, and yet, by objective standards, is not very reliable. Studies by National Academy of Sciences, the Innocence Project, and many others reveal that, by far, defendants freed by DNA evidence had been convicted based on eyewitness testimony of witnesses who are sincere in their belief that the identified person is the perpetrator, but who are mistaken. (See e.g., *Identffying the Culprit: Assessing Eyewitness Identification,* National Academy of Sciences, 2014 < https://www.innocenceproject.org/wp-content/uploads/2016/02/NAS-Report- ID.pdf >; *Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification,* Innocence Project, 2009 <https://www.innocenceproject.org/reevaluating-lineups-why-witnesses-make-mistakes-and-how-to-reduce-the-chance-of-a-misidentification/>.)

While mistaken identification obviously has terrible consequences for persons wrongly accused of crimes, it also severely impacts crime victims, and society at large. A crime victim who sincerely, but wrongly, identifies a perpetrator must live with the guilt that he or she was partly responsible for the defendant's incarceration. The crime victim may also have to again live in fear that the actual perpetrator might still be at large. And some consequences of mistaken identification that effect society at large include the erosion of public confidence in the criminal justice system and the potential threat to public safety when dangerous perpetrators remain at large.

There are many factors that can induce misidentification, some of which are environmental and others which are systemic. Environmental factors cannot be controlled. These factors might include the stress of the events based on the seriousness of the crime, lighting

conditions, whether a weapon was used, the length of time the witness saw the perpetrator, whether the identification was cross-racial , and the passage of time. (See e.g. *Mistaken Identification: The Eyewitness, Psychology, and the Law,* Cutler and Penrod, Cambridge University Press, 1995, pp. 101-105, <https://www.ncirs.gov/pdf fi1es1/Digitizatio n/l59775NCJRS.pdf >; see also *Identffj;ing the Culprit, supra,* p. 72.)

In contrast, systemic factors are those factors that are under the control of the criminal justice system, namely police investigators and prosecutors. These include factors such as lineup procedures (e.g., simultaneous vs. sequential lineups, blinded vs. non-blinded lineup administration); instructions given to witnesses before lineup identifications; and feedback to witnesses during or after the identification process.

This bill addresses some of the common systemic factors that can lead to misidentification by requiring law enforcement to adopt specified best practices in their identification procedures.

4) **Recommendations:** In October 2014, the National Academy of Sciences released the first ever comprehensive report on the science of eyewitness identification practices in the United States. *(Jdent|fj;ing the Culprit: Assessing Eyewitness Identification,* National Academy of Sciences, 2014, < https://www.innocencepro je ct.org/wp-conten t/uploads /2016/02/NAS-Report-ID.pdf >.) The report, recommended that la w enforcement adopt the following practices:

- Train all law enforcement officers in eyewitness identification.
- Conduct lineups and photo arrays blindly.
- Establish standardized witness instructions.
- Immediately ask the witness about his or her level of confidence in the identification.
- Videotape the entire eyewitness identification procedure.

This bill adopts three of those five recommended practices, namely that the identification procedures are conducted blindly; that the witness is asked about his or her level of confidence in the identification; and that the procedure is recorded.

Another organization which has made recommendations on identification procedures is the Commission on the Fair Administration of Justice, which was formed in 2004 to study and review the administration of criminal justice in California. The Commission released a rep01i on the subject of eyewitness identification procedures. (See https://digita1commons.1aw.scu.edu/cgi /viewcontent.cgi?referer=https: //www.google.com /&b ttpsredir=l&miicle=lOOO&context=ncippubs) Ten of the twelve recommendations were adopted unanimously with dissent by three members to the two remaining recommendations. The Commission's recommendations were as follows:

- Double-blind identification procedures should be utilized whenever practicable, so the person displaying photos in a photo spread or operating a lineup is not aware of the identity

of the actual suspect. When double-blind administration is not practicable, other double-blind alternatives should be considered.

When double-blind procedures are utilized, the use of sequential presentation of photos and lineup participants is preferred, so the witness is only presented with one person at a time. Photos or subjects should be presented in random order, and witnesses should be instructed to say yes, no, or unsure as to each photo or participant. Sequential procedures should not be used where double-blind administration is not available. (Members Lockyer, Fox and Totten dissented to this recommendation.)

- A single subject show-up should not be used if there is probable cause to arrest the suspect. The suggestiveness of show-ups should be minimized by documenting a description of the perpetrator prior to the show-up, transporting the witness to the location of the suspect. and where there are multiple witnesses they should be separated, and lineups or photo spreads should be used for remaining witnesses after an identification is obtained from one witness.

- All witnesses should be instructed that a suspect may or may not be in a photo spread, lineup or show-up, and they should be assured that an identification or failure to make an identification will not end the investigation.

- Live lineup procedures and photo displays should be preserved on videotape, or audiotape when video is not practicable. When videotaping is not practicable, a still photo should be taken of a live lineup. Police acquisition of necessary video equipment should be supported by legislative appropriations.

- At the conclusion of a lineup, photo presentation, or show-up, a witness who has made identification should describe his or her level of certainty, and that statement should be recorded or otherwise documented, and preserved. Witnesses should not be given feedback confirming the accuracy of their identification until a statement describing level of certainty has been documented.

- A minimum of six photos should be presented in a photo spread, and a minimum of six persons should be presented in a lineup. The fillers or foils in photo spreads and lineups should resemble the description of the suspect given at the time of the initial interview of the witness unless this method would result in an unreliable or suggestive presentation.

- Photo spreads and lineups should be presented to only one witness at a time, or where separate presentation is not practicable, witnesses should be separated so they are not aware of the responses of other witnesses.

- Training programs should be provided and required to train police in the use of recommended procedures for photo spreads, show-ups and lineups. The Legislature should provide adequate funding for any training necessitated by the recommendations of this Commission.

- Training programs should be provided and required for judges, prosecutors and defense lawyers, to acquaint them with the particular risks of cross-racial identifications, as well as unreliable identification procedures, and the use of expert testimony to explain these risks to

Junes. The Legislature should provide adequate funding for any training necessitated by the recommendations of this Commission.

- The standardized jury instructions utilized in eyewitness identification cases to acquaint juries with factors that may contribute to unreliable identifications should be evaluated in light of current scientific research regarding cross-racial identifications and the relevance of the degree of certainty expressed by witnesses in court. (Members Lockyer, Fox and Totten dissented to this recommendation.)

- The Commission recognizes that criminal justice procedures, including eyewitness identification protocols, greatly benefit from ongoing research and evaluation. Thus, the Commission recommends the continued study of the causes of mistaken eyewitness identification and the consideration of new or modified protocols.

Again, this bill adopts several of those recommendations, including: blind administration; admonishments to the witness that the perpetrator may not be included and that failure to identify will not end the investigation; separating witnesses during the identification process; using fillers which resemble the perpetrator; recording the identification procedure; ascertaining the witness's level of certainty; and not giving feedback about the accuracy of the identification.

5) **Reform Efforts in Other Jurisdictions:** Numerous states have passed some form of eyewitness identification reform legislation, among these are: West Virginia; North Carolina; Texas, Ohio, Nevada, Nebraska, and, most recently Florida and Louisiana. (See e.g, https://www.innocenceproject.org/nebraska-achieve-eyewitness-identification-reform/ (Nebraska); https://www.flsena te. gov/Sessio n/Bill/2017/03l 2/?Tab=Bil1History (Florida); and https://www.nola.com /cr ime/index.ssf/2018/05 /govemor signs bil1 aimed at p.html (Louisiana).)

Additionally, in January 2017, the US Department of Justice updated their recommendations on eyewitness identification procedures for conducting photo lineups and included many of provisions of this bill including: using a blind or blinded procedure; making sure the fillers meet the basic description of the perpetrator; and taking a confidence statement as soon as the identification is made. (See https://www. justice.gov/opa /pr/ justice-department-announces-department-wide-procedures-eyewitness-identification.)

6) **Applicable Law Regarding Suggestive Identification Procedures:** The right to due process, under the Fourteenth Amendment protects defendants from suggestive eyewitness identification procedures that create a substantial likelihood of irreparable mistaken identification. (See *Manson v. Brathwaite* (1977) 432 U.S. 98, 113-114; *Neil v. Biggers* (1972) 409 U.S. 188.) In reviewing a due process challenge to suggestive identification procedures, courts use a three-part inquiry. First, the court must determine if the pretrial identification procedure was impermissibly suggestive. *(United States v. Love* (9th Cir. 1984) 746 F.2d 477, 478.) Second, if the identification procedure was unduly suggestive, the court must detem1ine whether it was sufficiently reliable such that it does not implicate the defendant's due process rights. *(United States v. Bagley, supra*, 772 F.2d at p. 492.) Third, even if the pretrial identification procedure was suggestive and the identification was unreliable, the reviewing court must examine the trial court's failure to exclude the identification for harmless error. *(Ocampo v. Vail* (9th Cir. 2011) 649 F.3d 1098, 1114.)

An identification procedure is suggestive when it emphasizes the focus upon a single individual thereby indicating the police believe a particular person is responsible for the crime, or if it leads the witness to select that person on the basis of factors other than independent recollection. (See People v. Hunt (1977) 19 Cal.3rd 888, 894; People v. Sluts (1968) 259 Cal.App.2d 238, 246; see also *United States v. Montgomery* (9th Cir. 1998) 150 F.3d 983, 992.) To determine if an identification procedure was unduly suggestive, the court must examine the totality of the surrounding circumstances. *United States v. Bagley* (9th Cir. 1985) 772 F.2d 482, 492.)

As noted above, this bill addresses some of the systematic variables contributing to suggestive identifications such as the way lineups are conducted and how police interact with an identifying witness.

7) **Argument in Support:** According to the *California Innocence Coalition,* three of the co-sponsors of this bill, "Since 1989, there have been 186 men and women wrongfully convicted in our state and in over a third of these cases, mistaken eyewitness identification was the basis for conviction. Eyewitness misidentification is not unique to California; it is the cause of nearly 70% of convictions later overturned by DNA evidence nationwide. For the past three decades, the problem has been studied by stakeholders in the criminal justice system and social scientists resulting in recommendations of best practices to reduce the risk of rightful identifications being discredited in a court of law and of wrongful identifications resulting in the loss of freedom for innocent individuals.

"SB 923 would put California in line with 19 other states that have already adopted best practices state-wide to improve eyewitness identification procedures. The bill mandates consistency between all law enforcement agencies in our state to follow these practices: 1) that the administrator of the eyewitness procedure is blind or blinded to the identity of the suspect to ensure a witness is not inadvertently cued to select that person; 2) that appropriate fillers are used to make sure the suspect does not stand out in any way; 3) that the eyewitness is properly admonished prior to the procedure informing them the perpetrator may or may not be in the photo array; 4) that the eyewitness provides a statement of confidence following their identification, and 5) that the entire procedure is video recorded.

"Eyewitness identification is a critical tool for solving crimes, but when the identification is wrong it can be devastating not just to the wrongfully convicted, but to the safety of our communities. The actual culprits in California's DNA exoneration cases went on to be convicted of 9 additional violent crimes including 6 murders and 2 rapes. Additionally, it has cost California taxpayers $31 million to prosecute, incarcerate and compensate the wrongfully convicted.

"Law enforcement's adoption and implementation of eyewitness identification best practices serves all sides of justice by increasing the likelihood that the true perpetrator is rightfully convicted and by reducing the risk that an innocent person is wrongfully convicted."

8) **Argument in Opposition:** According to the *Los Angeles Police Protective League,* "We believe that the protocols for efficacious eye witness identification should be determined collaboratively at the local level. The unintended consequences of imposing an eye witness protocol with the benefit of daily experience and interaction among the enforcement and

prosecutorial branches can actually result in dysfunctional outcomes. For example, if it has been fostered, it is critical to allow for law enforcement officers who have developed trust with their communities or with victims of crimes to be able to conduct eyewitness identifications. Often times, the victims or witnesses to crimes will be unwilling to freely offer information to anyone they do not know, trust or feel comfortable with. It is common for these witnesses and victims to request to speak with specific ofiicers or even refuse to speak to officers they do not know or trust. This measure ignores that reality.

"The same can be applied to the mandate to videotape the procedure. Often times, when the camera turns on, the talking stops. Witnesses who come forward to make identifications are often terrified of repercussions for their interaction with law enforcement, and a video cam ra bolsters that fear.

"In addition to serious issues about the soundness of state-imposed fixed protocol, the added staffing requirements of SB 923 are significant. The requirement of conducting blinded administration of procedures will place an unrealistic burden on law enforcement agencies.

"We all share the goal of assuring the reliability of eyewitness identification; we believe the evaluation of the mandated protocols embodied in SB 923 suggests that it would create false identification outcomes that do not currently exist. Further, we believe that the proposed changes to law will result in less information that will lead to fewer solved crimes and decreased justice in our communities."

9) **Prior Legislation:**

a) AB 308 (Ammiano), of the 2011-2012 Legislative Session, would have required the Department of Justice (DOJ) and the Commission on Peace Officers Standards and Training (POST), in consultation with others, to develop guidelines for policies and procedures with respect to the collection and handling of eyewitness evidence. AB 308 was held on the Senate Appropriations Committee's Suspense File.

b) SB 1591 (Ridley-Thomas), of the 2007-2008 Legislative Session, would also have required that the *DOI* and others develop guidelines for policies and procedures in the collection and handling of eye witness evidence in criminal investigations. SB 1591 was held on the Senate Appropriations Committee's Suspense File.

c) SB 756 (Ridley-Thomas), of the 2007-2008 Legislative Session, would have required that the DOJ and others develop guidelines for policies and procedures in the collection and handling of eye witness evidence in criminal investigations. SB 756 was vetoed.

REGISTERED SUPPORT/ OPPOSITION :

Support

American Civil Liberties Union of California (Co-Sponsor)
California Innocence Project (Co-Sponsor)
Loyola Law School Project for the Innocent (Co-Sponsor)
Northern California Innocence Project (Co-Sponsor)
California Attorneys for Criminal Justice

California Public Defenders Association
Conference of California Bar Associations
Legal Services for Prisoners with Children
Root and Rebound
San Francisco Public Defender's Office

Opposition

Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotic Officers Association
California Police Chiefs Association
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League

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

Date of Hearing: June 12, 2018
Counsel: Sandy Uribe

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

SB 1005 (Atkins) - As Introduced February 6, 2018

SUMMARY: Authorizes the California Victim Compensation Board (board) to compensate a crime victim for a pet deposit and additional rent required if the victim has a pet. Specifically, **this bill:**

1) Expands "expenses incurred in relocating" to include pet deposit and additional rent required if the victim has a pet.

2) Includes pet deposit in the funds required for relocation, and upon expiration of a victim's rental agreement, VCB shall be named the recipient of the funds.

EXISTING LAW:

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

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

3) Authorizes the board to reimburse for pecuniary loss for the follO\ving types of losses:

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

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

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

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

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

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

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

be necessary for the emotional well-being of the victim; and,

h) Funeral or burial expenses. (Gov. Code, §§ 13957, subd. (a) & 13957.5, subd. (a).)

4) States that if a security deposit is required for relocation, the board shall be named as the recipient and receive the funds upon expiration of the victim's rental agreement. (Gov. Code, § 13957, subd. (a)(7)(F).)

5) Limits the total award to or on behalf of each victim or derivative victim to $70,000. (Gov. Code,§§ 13957, subd. (b), & 13957.5, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "SB 1005 will help victims of domestic violence leave their abusive environment by reducing the financial costs associated with escaping domestic violence with their pet, who is often an impmtant source of comfmt and support."

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

3) Gap Analysis Report: In July 2015, the board issued the third in a series ofreports which sought to determine the unmet needs of crime victims and barriers to services for crime victims. This final report outlined gaps in current services and compensation provided under CalVCP. (See *Gap Analysis Report: California's Underserved Crime Victims and their Access to Victim Services and Compensation.* July 2015. <http://vcgcb.ca.gov/victims /ovcgrant2013/delive rables/CalVCPGapAnal ysis-OVCGrant20 l 3.pdf >.) The report noted that the following unmet financial needs were among the more commonly identified by victims:

- Victims who received funeral and burial compensation stated that the actual cost of the services exceeded the CalVCP reimbursement limit.
- Victims stated that the amounts for relocation expenses were inadequate to cover the actual costs of relocation.
- Mental health providers stated that victims' lack of access to transportation creates difficulty accessing mental health treatment.
- Victims and advocates noted that lack of access to transportation was a barrier to obtaining other needed services.

- Childcare expenses are not currently reimbursed by CalVCP, further limiting some victims' access to medical or mental health services.

- Victims need to be reimbursed for lost wages for time taken from work to access services or attend crime-related appointments. *(Id.* at p. 7.)

This bill would provide that as part of relocation expenses, a victim may seek reimbursement for a pet deposit or increased rent due to owning a pet.

4) Financial Condition of the CalVCP: The Legislative Analyst's Office (LAO) has informed this committee that restitution fund revenue is depleting and that the fund is facing insolvency. Based on budget documents the LAO has provided this committee with the following figures regardingthe financial status of the CalVCP[1]:

Restitution Fund (in thousands)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 (estimated)	FY2018-19 (projected)
Adjusted Beginning Balance	$76,765	$85,759	$86,789	$68,530	$48,434
Revenues	$102,292	$96,433	$87,177	$70,704	$68,138
Expenditures	$93,301	$122,092	$105,439	$90,801	$90,823
Net Revenue	$8,991	($25,659)	($18,262)	($20,097)	($22,685)
Fund Balance	$85,756	$60,100	$68,527	$48,433	$25,749

While this bill does not increase the total amount a victim can be reimbursed by CalVCP ($70,000), it does provide for payment by the board for a new type of expense. Does it make sense to increase services while revenue is depleting and there are concerns about insolvency?

5) Argument in Support: The *California Partnership to End Domestic Violence,* a Co-sponsor of this bill, states, "This bill would strengthen support for survivors of violent crime that seek to protect and maintain their pets. In particular. SB 1005 would provid e important financial assistance to victims of domestic violence given the significant connection between domestic violence and animal cruelty. Perpetrators of domestic violence often threaten harm or bring actual harm to their victims' pets in order to control their victims or keep them from leaving. Concern over the safety of pets often delays domestic violence victims from seeking help, causes them to return to their abuser, or prevents them from seeking assistance entirely. For many violent crime survivors, pets are sources of comfort and provide strong emotional support. 95% of American pet owners consider their pets to be members of the family.

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1 The figures are represented are in thousands . So, for example, the projected fund balance for FY 2018-2019 is $25,749,000.

"In order to escape abuse, while protecting their pets, survivors of domestic ahuse must necessarily identify alternative housing, but may lack the financial resources to relocate to appropriate accommodations. Financial abuse is a common tactic used by abusers to gain power and control in a relationship. Research indicates that financial abuse is experienced in 98% of abusive relationships. In many cases, landlords that are willing to accommodate pets often charge a 'pet deposit' and/or surplus rent as a condition of allowing pets. This additional cost may serve as a significant barrier to a victim's relocation. By clarifying existing law to specify that 'pet deposits' and 'pet rent' are eligible relocation costs, these victims would have a source of financial support to remove themselves from a violent situation."

6) Related Legislation:

a) AB 900 (Gonzalez Fletcher) authorizes the board to provide compensation equal to loss of income or support to human trafficking victims, as specified. AB 900 is pending in the Senate Appropriations Committee.

b) AB 1939 (Steinorth) includes temporary housing for the victim's pets as part of relocation expenses which are reimbursable by the board. AB 1939 is pending referral by the Senate Rules Committee.

c) SB 1232 (Bradford) requires an application for compensation to be filed within three years after the victim attains 21 years of age, instead of 18, except as specified. SB 1232 will be heard in this Committee today.

REGISTERED SUPPORT/ OPPOSITION :

Support

American Society for the Prevention of Cruelty to Animals (Co-Sponsor)
California Partnership to End Domestic Violence (Co-Sponsor)
Best Friends Animal Society
California Animal Control Directors Association
Next Door Solutions
Red Rover
San Diego Humane Society
San Francisco SPCA
State Humane Association of California

Opposition

None

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

Date of Hearing: June 12, 2018
Counsel: Liah Burnley

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

SB 1050 (Lara) - As Amended June 6, 2018

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to assist a person who is exonerated as to a conviction for which he or she is serving a state prison sentence at the time of exoneration. Specifically, **this bill:**

1) Requires CDCR to provide transitional services, including housing assistance, job training, and mental health services to exonerees, as applicable.

2) States that the transitional services shall be offered within the first week of an individual's exoneration and again within the first 30 days of exoneration.

3) Provides that the transitional services shall be provided for a period of not less than six months and not more than one year from the date of release unless the exonerated person qualifies for services beyond one year under existing law.

4) Requires CDCR to assist exonerated inmates with enrollment in the Medi-Cal program for the exonerated individual and any qualified family members.

5) Requires CDCR to assist exonerated inmates with enrollment in the CalFresh program.

6) States that, to the extent permitted by federal law, eligibility in the CalFresh program for an exonerated individual without employment is extended to one year.

7) Requires CDCR to refer exonerated inmates to the Employment Development Department and applicable regional planning units for workforce services.

8) Requires CDCR to assist exonerated inmates with enrollment in the federal supplemental security income benefits program for the individual and any qualified family members.

9) Provides that, in addition to any other payment to which he or she is entitled to by law, each person who is exonerated shall be paid $1,000 upon his or her release from incarceration, from funds to be made available upon appropriation by the Legislature.

10) Requires CDCR to notify the Department of Justice (DOJ) that a person meets the definition of exonerated within 24 hours after the department releases the person from custody.

11) States that, within 24 hours of receiving notice that a person meets the definition of exonerated, the DOJ shall immediately update the person's state summary criminal history information with a notation that the person is exonerated.

EXISTING LAW:

l) States that whenever a person is convicted of a charge, and the conviction was 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, including records of arrest and detention, be sealed and allows the defendant to state that he or she was not arrested, convicted of that charge or that he or she was found innocent of that charge by the court. (Pen. Code, § 851.86.)

2) States that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the California Victim Compensation (CalVCB). (Pen. Code, § 851.865.)

3) Requires the CalVCB to recommend to the Legislature that an appropriation be made, without a hearing, upon receipt of the application. (Pen. Code, § 851.865.)

4) Specifies that the rate of compensation be $140 per day of incarceration served subsequent to the claimant's conviction. (Pen. Code,§ 4904.)

5) Prohibits this compensation from being considered gross income for state tax purposes. (Pen. Code, § 4904.)

6) States that any person who, having been convicted of any felony and imprisoned in the state prison or county jail for that conviction, is granted a pardon by the Governor for the reason he or she was innocent of the crime with which he or she was convicted, is eligible to present a cla1m against the state to the CalVCB for the monetary injury sustained by him or her through the en-oneous conviction and imprisonment. (Pen. Code, § 4900.)

7) Requires en-oneously convicted and pardoned individual to present a claim to the Ca!VCB against the state within a period of two years after judgment of acquittal or after pardon granted, or after release from custody. (Pen. Code, § 4901, subd. (a).)

8) Requires the Department of Corrections and Rehabilitation to assist a person who is exonerated as to a conviction for which he or she is serving a state prison sentence at the time of exoneration with transitional services, including housing assistance, job training, and mental health services, as applicable. (Pen. Code,§ 3007.05, subd. (c).)

9) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to determine the extent of transitional services to be made applicable. (Pen. Code,§ 3007.05, subd. (c).)

10) Requires that the CDCR provide transitional services to an exonerated person for a period of not less than six months and not more than one year from the date of release. (Pen. Code, § 3007.05, subd. (c).)

11) Requires the CDCR to establish a case management reentry pilot program for offenders who are likely to benefit from case management reentry strategies designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. (Pen. Code,§ 3016, subd. (a).)

12) Defines "exonerated" as a person who has been convicted and subsequently either ofthe following occurred:

a) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person's conviction was reversed on appeal on the basis of insufficient evidence;

b) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges or following a determination that the person is entitled to release on his or her own recognizance, or to nail pending retrial or pending appeal; or

c) The person was given an absolute pardon by the governor on the basis that the person was innocent. (Pen. Code,§ 3007.05, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "SB 1050 provides critical services to exonerated people upon their release, including access to Medi-Cal, CalFresh, work training programs, and gate money. Since 1989, there have been a total of 199 exonerations in California. Justice failed these 199 people. Upon release, the state fails them again when we do not provide them access to available and much needed public services. This is a critical step to ensure that this already vulnerable population does not fall into homelessness and poverty. The irony is that we already provide all of these resources to people who have committed a crime, but we do not do the same for the innocent. SB 1050 is a common sense measure to support people who have been wronged by our justice system."

2) **Transitional Services for Exonerees:** Wrongfully convicted exonerees face many chalienging obstacles when entering back into society, including psychological. physical. and financial difficulties. As stated by law professor Donna Mckneelen:

> The psychological effects of serving time in prison for a crime they did not commit often imposes a heavy burden on the wrongfully convicted. Unjustly serving time in prison often leaves exonerees angry, bitter, frustrated, confused, and scared. Over the long term of their incarceration, many inmates experience personality changes, difficulty in coping with confinement and loss of freedom, and feelings of deep loss and grief for the life they once had. Exoneration often brings conflicting feelings: feeling of relief and happiness on one hand, and feelings of resentment and anger on the other.
>
> Most often, no one apologizes to the exonerees nor takes blame for their situation. In fact, often the public, family members, friends, law enforcement, and others refuse to accept that the exoneree is actually innocent. This stigma leaves the exonerees alone with no one to assist them with recovering what they have lost. An exoneree must often learn to deal with the stigma associated with the crime from which they were exonerated even though they were not the one who committed the crime. (McKneelen, D., *Oh Lord Won't You Buy Me A Mercedes Benz?: A Comparison Of State Wrongful Conviction Compensation Statutes* (2013) 15 Scholar 185, 187-189.)

Existing law requires CDCR to provide transitional services to an exonerated person. An exonerated person can also petition the court to seal the case and arrest records, however, these records remain accessible by law enforcement officials. Though a step in the right direction, the existing services do not properly compensate an individual who was wrongfully deprived of their liberty.

This bill would expand transitional services for exonerated persons, to include enrollment in Medi-Cal and CalFresh, state and federal social security benefits, and referral to Employment Development Department. This bill would also entitle exonerated individuals to receive $1,000 upon release from incarceration, and require the DOJ to put a notation on the person's criminal history information that the person has been exonerated.

3) **Argument in Support:** According to the *California Public Defenders Association,* "SB 1050, if adopted, would require the State of California, through the Department of Corrections, to assist former inmates, released from prison after having been exonerated, with transitional services, including housing assistance, job training, and mental health care, and to assist them with enrollment in Medi-Cal and CalFresh and referrals to the Employment Development Department and applicable regional planning units for workforce services.

"California leads the nation in exonerations as defined by the National Registry of Exonerations with 120, surpassing Illinois (110), Texas (100), and New York (100). According to a study conducted by the California Wrongful Convictions Project, since 1989, courts have exonerated or dismissed convictions against 214 Californians. These wrongful convictions have costed those convicted more than 1,300 years of freedom and taxpayers $129 million ($144 million when prison costs are adjusted for inflation). This figure does not include the costs of legal representation and court proceedings necessary to overturn the convictions.

"Those proven to have been wrongfully convicted spend, on average, more than 14 years behind bars. For these innocent men and women, the agony of prison life is compounded by regret - wondering what they might have made of their lives had they not been wrongfully convicted. They are separated, sometimes forever, from family and friends. They are denied the opportunity to establish themselves and achieve social and professional success. Upon their release into a vastly different world than the one they once knew, they realize that life, and, particularly technology, has passed them by. Without money, housing, transportation, health services or insurance, many become despondent, feeling the pain of their punishment after release even more acutely than while they were wrongfully imprisoned. States have a responsibility to restore the lives of the wrongfully convicted, to the extent possible, by giving them a meaningful chance at success following their release from prison, and SB 1050 is an important step in the right direction."

4) Prior Legislation:

a) SB 336 (Anderson), Chapter 728, Statutes of 2017, revised the definition of "exonerated" for the purpose of eligibility for assistance with transitional services to include a person who has been convicted and subsequently was granted a writ of habeas corpus.

b) SB 1134 (Leno), Chapter 785, Statutes of 2016, permits a writ of habeas corpus to be prosecuted on the basis of new evidence that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome of the trial.

c) AB 672 (Jones-Sawyer), Obie's Law, Chapter 403, Statutes of 2015, requires the state to provide exonerees reentry services, including identification cards, housing assistance, job training, and mental health services for no less than 6 months and up to one year.

d) SB 618 (Leno), Chapter 800, Statutes of 2013, provides clarity to the process for compensating persons who have been exonerated after serving time incarcerated.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Co-Sponsor)
Exonerated Nation (Co-Sponsor)
American Civil Liberties Union of California
California Catholic Conference, Inc.
California of Conference Bar Associations
California Public Defenders Association
Conference of California Bar Associations
Ella Baker Center for Human Rights
National Association of Social Workers

Opposition

None

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

Date of Hearing: June 12, 2018
Counsel: Matthew Fleming

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

SB 1106 (Hill) - As Amended April 9, 2018

SUMMARY: Extends the operative date of the existing Transitional Age Youth pilot program to January 1, 2022, and establishes a December 31, 2020 deadline by which a report on the program must be delivered to the Senate and Assembly Public Safety Committees. Expands the pilot program to the county of Ventura.

EXISTING LAW:

1) Provides that the counties of Alameda, Butte, Napa, Nevada, and Santa Clara may establish a pilot program to operate a deferred entry of judgment pilot program for certain eligible defendants. (Pen. Code,§ 1000.7, subd. (a).)

2) Provides that a defendant may participate in a deferred entry of judgment pilot program within the county's juvenile hall if that person is charged with committing a felony offense, except as specified, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

   a) Is 18 years of age or older, but under 21 years of age on the date the offense was committed;

   b) Is suitable for the program after evaluation using a risk assessment tool, as specified;

   c) Shows the ability to benefit from services generally reserved for delinquents, including but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;

   d) Meets the rules of the juvenile hall developed in accordance with the applicable regulations;

   e) Does not have a prior or current conviction for committing certain specified offenses; and,

   f) Is not required to register as a sex offender, as specified. (Pen. Code, § 1000.7 , subd. (b).)

3) Provides that the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, must develop an evaluation process using a risk assessment tool to determine eligibility for the program. (Pen. Code,§ 1000.7, subd. (c).)

4) Provides that if the defendant is required to register as a sex offender, as specified, or if he or she has been convicted of one or more of the following offenses, he or she is not eligible for the program:

   a) A "serious" felony, as that term is defined by law;

   b) A "violent" felony, as that term is defined by law; or,

   c) A serious or violent crime as that term is defined by juvenile law. (Pen. Code, § 1000.7, subd. (d).)

5) Provides that the court must grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement ofjudgment. (Pen. Code,§ 1000.7, subd. (e).)

6) Provides that if the probation department determines that the defendant is not eligible for the deferred entry of judgment pilot program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case. (Pen. Code, § 1000.7, subd. (f)(l).)

7) Provides that if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court is required to hold a hearing to determine whether judgment should be entered. (Pen. Code, § 1000.7, subd. (f)(2).)

8) Provides that if the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court is required to render a finding of guilt to the charge or charges pleaded, enter judgment, and schedule a sentencing hearing, and the probation department, in consultation with the county sheriff, is required to remove the defendant from the program and return him or her to custody in county jail. The mechanism of when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local multidisciplinary team, as specified. *(Id.)*

9) Provides that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court is required to dismiss the criminal charge or charges. (Pen. Code, § 1000.7, subd. (f)(3).)

10) Prohibits a defendant participating in this program from serving longer than one year in juvenile hall. (Pen. Code,§ 1000.7, subd. (g).)

11) Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. (Pen. Code, § 1000.7, subd. (h).)

12) Requires the probation department to submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county. (Pen. Code, § 1000.7, subd. (i).)

13) Prohibits a defendant participating in the program pursuant to this section from coming into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education. (Pen. Code,§ 1000.7, subd. 0).)

14) Provides that prior to establishing a pilot program pursuant to this section, the county is required to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The BSCC is required to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the BSCC is required to take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court. (Pen. Code,§ 1000.7, subd. (k).)

1 5) Requires the BSCC to review a county's pilot program to ensure compliance with requirements of the federal law, relating to "sight and sound" separation between juveniles and adult inmates. (Pen. Code,§ 1000.7, subd. (1).)

16) Provides that the statutes related to this pilot program apply to a defendant who would otherwise serve time in custody in a county jail. Participation in this pilot program is prohibited as an alternative to a sentence involving community supervision. (Pen. Code, § 1000.7, subd. (m)(l).)

I 7) Requires that each county establish a multidisciplinary team that shall meet periodically to review and discuss the implementation, practices, and impact of the program. The team shall include representatives from the following entities:

a) Probation Depaitment;

b) The district attorney's office;

c) The public defender's office;

d) The sheriffs department;

e) Courts located in the county;

f) The county board of supervisors;

g) The county health and human services department;

h) A youth advocacy group. (Pen. Code,§ 1000.7, subd. (m)(2).)

18) Requires a county that establishes a pilot program pursuant to this section to submit data regarding the pilot program to the BSCC. (Pen. Code,§ 1000.7, subd. (n)(l).)

19) Requires the BSCC to conduct an evaluation of the pilot program's impact and effectiveness. The evaluation is required to include, but not limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes. (Pen. Code,§ 1000.7, subd. (n)(2).)

20) Requires each evaluation to be combined into a comprehensive report and submitted to the Assembly and Senate Committees on Public Safety. (Pen. Code,§ 1000.7, subd. (n)(3).)

21) Provides that the BSCC may contract with an independent entity, including, but not limited to, the Regents of the University of California, for the purposes of carrying out the duties of the board pursuant to this subdivision. (Pen. Code, § 1000.7, subd. (n)(4).)

22) Provides that this program shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January I, 2020, deletes or extends that date. (Pen. Code,§ 1000.7, subd. (o).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "SB 1006 extends an existing pilot project created by SB 1004 in 2016 which intends to help improve the outcomes of young adults who come into contact with the justice system.

"The SB l 004 pilot program is currently underway; however, the existing sunset date is January l, 2020. Once the bill was enacted there were processes completed by the Board of State and Community Corrections to certify the programs compliance with State and Federal requirements.

"Because the pilot program requires an evaluation to be conducted on the program and its effectiveness, it's important the sunset program date be extended to January 1, 2022.

"This extension will help account for the implementation time at the beginning of the pilot as well as authorize the program to operate for a length ohime that delivers the most comprehensive and evidence based evaluation.

"Additionally, by adding Ventura to the program it will add to the dataset and help provide valuable information."

2) Transitional Age Youth Pilot Program: SB 1004 (Hill) Chapter 865, Statutes of 2016, authorized five counties -- Alameda, Butte, Napa, Nevada, and Santa Clara -- to operate a three-year pilot program in which certain young adult offenders would serve their time in juvenile hall instead of jail. The bill recognized that although 18 to 21 year olds are legally adults, "young offenders... are still undergoing significant brain development and... may be

hetter served by the juvenile justice system with corresponding age appropriate intensive services." (Sen. Corn. on Public Safety, Analysis of Sen. Bill No. 1004 (2015-2016 Reg. Sess.) as amended on Mar. 28, 2016.)

The pilot program is a deferred entry of judgment program, meaning that participants have to plead guilty in order to be eligible for the program. If they succeed in the program then the criminal charges are dismissed. To be eligible, the defendant must be between the ages of 18 and 21, and must not have a prior or current conviction for a serious, violent, or sex offense. Participants must consent to participate in the program, be assessed and found suitable for the program, and show the ability to benefit from the services generally provided to juvenile hall youth. The probation department is required to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program. Finally, a person participating in the program cannot serve more than one year injuvenile hall.

In order to establish the pilot program, each county was required to apply to the BSCC for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. According to the bill's author, a significant part of the first year of the three-year pilot program was consumed by the bill's implementation. The BSCC had to create an approval process for county applications, and county probation departments had to prepare for the program as well. As a result, the programs were not fully operational by January 1, 2017. For example, Alameda County did not receive approval for its program from the BSCC until January 26, 2018. (http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_03_13_18/PUBLIC%20PROTECTION/Regular%20Calendar/Probation 260984.pdf [as of Jun. 4, 2018].)

Participating counties are required to submit data regarding their program to the BSCC, and the BSCC is then required to evaluate the pilot program's impact and effectiveness. The author believes that an extension of the pilot program's sunset date is necessary in order for enough data to be collected. This bill would also add Ventura County to the group of counties included in the pilot program. The rationale behind adding Ventura County is to add a mid-sized county to the pilot program to improve the scope and breadth of the data that would be collected. The sponsor of the bill does not believe that adding Ventura County will result in significant, additional delay.

Although no comprehensive evaluation or analysis has been completed yet, counties are beginning to compile data on their programs. Some of the opponents of SB 1004 expressed concern that participants would be held in juvenile hall for the full year allowed under the bill. Anecdotal evidence suggests, however, that many counties are trying to get participants back into the community sooner rather than later and providing reentry-like services upon release. Furthermore, this is a voluntary program. Potential participants are able to opt out if they believe participation in the program will not be in their best interest.

3) **Argument in Support:** According to the *California Academy o,fChild & Adolescent Psychiatry:* "Adolescent offenders .who are 18 to 21 years old are still undergoing significant cognitive brain development. Research has shown that this population is often better served in the juvenile justice system, accompanied by age appropriate intensive services. This is due to the fact that individuals do not fully develop adult-quality decision-making abilities until their early twenties, which is a key reason that young adults are more likely to engage in

risky behavior.

"SB 1004 (Hill, Chapter 865, Statutes of 2016) was designed to address this issue by authorizing several counties to voluntarily enact a pilot program that would allow 18 to 21 year-old offenders to be housed in a juvenile detention facility as opposed to the county jail. To ensure that the pilot program was as successful as possible, its implementation process included the establishment of a county multidisciplinary team, the development of program criteria, and coordination with local stakeholders. However, due to this thorough implementation process, the pilot programs were not fully operational by the enactment date.

"SB 1106 (Hill) would extend the sunset date of the pilot programs established by SB 1004 (Hill, Chapter 865, Statutes of 2016) to January 1, 2022 to account for the additional implementation time. The bill would also add Ventura County to the program in order to expand the dataset and provide additional information. Both of these changes will help ensure that the pilot is able to deliver comprehensive and evidence-based evaluation of its approach to serving the young adult offender population."

4) **Argument in Opposition:** According to the *Center on Juvenile and Criminal Justice:*
" County juvenile facilities, includingjuvenile halls, camps, and ranches, are operating at well below their rated capacity. In June 2017, the population of these facilities comprised just 35 percent of bed capacity and, in juvenile halls alone, there are approximately 5,300 empty institutional beds. I This unprecedented excess capacity is the result of historic declines in juvenile felony arrests, which have fallen 73 percent since 1999.2 Despite these trends, county juvenile facility capacity has remained relatively flat: from 1999 to 2017, the number of beds in local juvenile halls, camps, and ranches increased by 14 percent.

"With the highest vacancy rate in recent history, it is clear that California has overbuilt its juvenile justice system. Through Senate Bill 81 (2007) and Assembly Bill 1628 (2010), the state has invested $300 million in the construction of new county-run facilities for youth. The purpose of this investment was to allow counties to serve high-needs youth who would otherwise be placed in the state youth correctional system, the Division of Juvenile Justice (DJJ). Yet counties continue to commit high numbers of youth to the troubled DJJ facilities, including SB 1004 pilot counties Butte and Alameda, which report a DJJ population that is more than twice the statewide average per juvenile felony arrest.

"In 2016, CJCJ opposed SB 1004 with concern that existing juvenile hall vacancies need not be filled by young adults who would be better served outside of an incarceration setting. Specifically, SB 1004 authorized courts in Alameda, Santa Clara, Butte, Napa, and Nevada counties to place young adults in juvenile halls for up to a year upon condition of an admission of guilt. It provided no guarantee against the incarceration of young adults who might otherwise be served in the community.

"As a condition of participation, young adults must be charged with a non-serious, non-violent, and non-sexual offense, meaning that many participants are low-risk. Research shows that low-risk individuals are better served in their communities, and that community-based services are preferable to incarceration because they are proven to reduce recidivism by allowing participants to remain closer to social supports and meaningful opportunities for education and employment. They can also address underlying needs at a fraction of the cost of incarceration.

"The existing pilot places young adults in facilities with youth under 18, requiring participating counties to maintain sight and sound separation during housing. recreation, and education. Maintaining this separation restricts movement throughout the facilities and may limit the time younger youth can spend in recreational and rehabilitative spaces."

5) **Prior Legislation:** SB 1004 (Hill) Chapter 865, Statutes of2016 established the Transitional Age Youth pilot program.

REGISTERED SUPPORT/ OPPOSITION :

Support

California Academy of Child and Adolescent Psychiatry
California Probation, Parole, and Correctional Association
California Public Defender's Association
California State Association of Counties
Chief Probation Officers of California
Ventura County Board of Supervisors

Opposition

Center on Juvenile and Criminal Justice

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

Date of Hearing: June 12, 2018
Counsel: Liah Burnley

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

SB 1146 (Stone) - As Amended April 26, 2018

SUMMARY: Authori zes prison authorities to open and inspect outgoing inmate mail for the purpose of enforcing restraining and protective orders and provides that prison authorities shall not open or inspect outgoing confidential correspondence between an inmate and his or her attorney.

EXISTING LAW:

1) Defines a "protective order" as an order enjoining specific acts of abuse, excluding a person from a dwelling, or enjoying other specified behavior. (Fam. Code, § 6281.)

2) Authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur. (Pen. Code,§ 136.2 , subd. (a).)

3) Allows a court to issue a protective order for up to 10 years to protect the victim of the crime when a defendant is convicted of a domestic violence offense, rape, spousal rape, statutory rape, a gang offense, any offense requiring sex-offender registration, including pimping and pandering of a minor, stalking, and elder and dependent adult abuse cases. (Pen. Code, §§ 136.2, subd. (i)(l), 646.9, subd. (k), 368, subd. (1).)

4) Allows the court to issue civil harassment protective orders and workplace violence protective orders for up to three years upon a showing of clear and convincing evidence. (Civ. Pro. Code,§§ 527.6, 527.8.)

5) States that the prosecuting agency of each county shall have the primary responsibility for the enforcement of protective orders. (Pen. Code§ 273.6 subd. (f).)

6) Provides that a person violating a protective order may be punished for any offense related to intimidation of witnesses or victims or for contempt of court. (Pen. Code,§ 136.2, subd. (b).)

7) Provides that any intentional and knowing violation of a protective order is a misdemeanor punishable by a fine of not more than $1,000, imprisonment in county jail for not more than one year, or both. (Pen. Code § 273.6 subd. (a).)

8) States that a subsequent conviction for a violation of a protective order, occuITing within seven years of a prior conviction for a violation of a protective order, and involving an act or threat of violence, is a misdemeanor punishable by imprisonment in a county jail not to exceed one year, or a felony punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code§ 273.6 subd. (d).)

9) Provides that a subsequent conviction for a violation of a protective order within one year of a prior conviction for a violation of a protective order that results in physical injury to a victim, is a misdemeanor punishable by a fine of not more than $2.000 or imprisonment in county jail for not less than six months or more than one year, or as a felony punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code § 273.6 subd. (e).)

10) Enumerates specific civil rights of prisoners including, to own, sell, and convey property; correspond confidentially with any member of the State Bar and holder of public office; purchase, receive, and read newspapers, periodicals, and books; initiate civil actions; marry; create power of appointment, create a will; and to receive certain benefits. (Pen Code § 2601.)

11) Clarifies that the statutory provision of law giving state prisoners the right to receive periodicals does not limit the ability of prison officials to open and inspect all incoming packages received by an inmate. (Pen. Code§ 2601 subd. (c)(2)(A).)

12) States that a person sentenced to imprisonment in a state prison may be deprived of rights that are reasonably related to legitimate penological interests. (Pen. Code § 2600.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "Senator Stone seeks to add an extra layer of protection for victims from the emotional trauma of receiving communications from an incarcerated individual. The laws exist to protect victims both physically and emotionally, and these victims expect just that, protection. While the prison or jail authorities are searching the outgoing mail, as per current law and procedure, these harmful letters can be stopped before they can inflict the emotional damage on the victim. SB 1146 does just that, giving the prison or jail staff the authorization to enforce restraining orders and protection orders while conducting their outgoing mail searches. All victims deserve this simple act of protection."

2) **Inspecting Inmate Mail:** The question of whether prison officials can monitor inmates' non-confidential communications, including their outgoing mail, has long been settled. "Except where the communication is a confidential one addressed to an attorney, court or public official, a prisoner has no expectation of privacy with respect to letters posted by him." *(People v. Harris* (2000) 83 Cal. App. 4th 371, 375, 99.)

   Indeed, Penal Code§ 2601 states that prison officials may deprive inmates rights that are reasonably related to penological interests, such as opening and inspecting and disallowing outgoing mail that violates the law. Moreover, the rules regulating California s prisons clearly state that "[n]on-confidential correspondence may be disallowed if the text of such correspondence presents a danger, or a threat of danger, to any person." (Cal. Code Regs. tit. 15 § 3135.) Certain correspondence including mail tending to incite murder, violence, or physical harm to any person, mail that threatens blackmail or extortion, mail concerning plans to escape, or for activities that violate the law is specifically disallowed. *(Id.)* Prison

officials may open and inspect outgoing inmate mail and restrict mail of this nature from being delivered. *(Id.)*

Additionally, the receiver of inmate mail can ask prison officials for a reasonable remedy including disallowing mail that appears to perpetuate the problem, or disallowing all mail from the inmate to the individual. *(Ibid.)* A person who receives mail in violation of a restraining or protective order may choose to simply ignore the mail, ask CDCR to disallow the mail, initiate civil contempt proceedings, or file a complaint with local law enforcement. (Id.)The district attorney may initiate criminal proceedings against any individual, including a prison inmate, who violates a protective order, and if found guilty, the individual can receive an additional term of imprisonment. (Pen. Code§ 273.6 subd. (a).)

3) **Restraining Orders:** As a general matter, the court can issue a protective order in several circumstances. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic-violence-related offense, rape, spousal rape, statutory rape, gang cases, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(l).) The same is true of stalking cases (Pen. Code, §646.9, subd. (k)). Similarly, in cases involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit ... harassing, intimidating, or threatening the victim or the victim's family members or spouse." (Pen. Code,§ 1201.3, subd. (a).) Lastly, the court has authority to issue no-contact orders lasting up to 10 years in cases involving the abuse of an elder or dependent adult. (Pen. Code, § 368, subd. (1).)

A person can violate a protective order in a number of ways, for example by contacting the victim via telephone, text, email, or mail. The consequences of having the court issue a restraining order against a person can be very severe. Disobedience of a court order, including restraining and protective orders, may be punished as criminal contempt. The criminal contempt power is vested in the prosecution and, as such, the prosecution has the ability to enforce a restraining order. (Pen. Code § 273.6 subd. (f).) Contempt is proven by showing that the defendant willfully intended to disobey the order, and disregard of the duty to obey the order. *(In re Karpf(l* 970) 10 Cal.App.3d 355, 372.) Criminal contempt is a misdemeanor and criminal contempt proceedings conducted like any other misdemeanor offense. *(In re McKinney* (1968) 70 Cal.2d 8, 1O; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.)

4) Unintended Consequences of this Bill:

a) *Transforms the Responsibilities of Prison Authorities:* This bill would increase the responsibilities of CDCR officials by requiring them to enforce restraining and protective orders. This is problematic for several reasons. First, and most important, CDCR does not have a system or mechanism for tracking restraining orders and protective orders. This bill would require CDCR to create and implement a monitoring system for restraining orders, and collect the required information from each and every person in its custody. This would be a significant cost to the state.

Second, this bill would permit prison authorities to open and inspect outgoing mail for the "purposes of enforcing a restraining order or protective order." It is unclear what "enforcing a restraining order or protective order" entails. Notably, this bill does not state whether such mail is disallowed or deliverable, nor does it give prison authorities any direction about how to "enforce" protective orders. Does "enforce" mean that prison authorities can simply refuse to send mail that they determine to be a violation of protective order? Must prison officials enforce protective orders by requesting local law enforcement or district attorney to review the conduct and initiate misdemeanor or felony proceedings, something that victims are already empowered to do? Or must prison officials use their internal disciplinary process to "enforce" violations of protective orders? Importantly, not all CDCR mailroom officials are peace officers and therefore, they are not the appropriate staff members to "enforce" the law . /\s such, this bill would require additional staffing that are sworn peace officers to review outgoing mail and enforce the provisions of this bill. Moreover, should this new responsibility of enforcing protective orders extend to all inmate communications, such as telephone calls and inmate visits?

Third, this bill would require prison officials to inspect each and every item of outgoing mail to determine whether it violates a restraining or protective order. These officials would be tasked with determining whether the inmate has a valid protective or restraining order against the recipient of the mail, interpreting the order to determine whether mail contact is allowed or prohibited by the order, reading the mail to determine whether the communication is directed at the person in the order, making a decision whether or not the mail violates the order, notifying the inmate that his or her mail was not sent because it violated a protective order, and possibly notifying law enforcement of the inmate's attempt to violate the order. This bill would require CDCR mailroom staff to undergo training on how to interpret a protective order and understand when a particular item of mail is in violation of the order.

Lastly, to avoid constitutional due process issues, CDCR would expectantly be tasked with creating an administrative appeal process for inmates who believe that prison authorities wrongfully determined that their outgoing mail violated a restraining or protective order.

The Legislature should consider whether the existing process- which empowers the recipient of inmate mail to request CDCR to disallow all mail to him or her, initiate civil enforcement proceedings, report the conduct to law enforcement, or simply toss the unwanted mail in the recycle bin-is more efficient.

b) *Disempowers the Victim:* Though this bill is well intentioned to help and empower victims, it actually robs victims of their own personal autonomy and power. For example, there may be instances where the victim desires, or even initiates, contact with the inmate. Some restraining orders are issued for a lengthy period of time, up to 10 years. During that time, the victim may want to contact with the inmate, to make amends, discuss the passing of a relative, or figure out joint finances, for example. This bill would prohibit such communication-even if the victim does not find it to be harassing. Ultimately, the victim, not CDCR mailroom staff, should have the authority to determine whether he or she desires to receive communications from the inmate.

c) *Expressio Unius Est Exclusio Alterisus:* This bill has the opposite of its intended effect and limits the ability of prison officials to open and inspect outgoing mail. Under the statutory construction rule *expressio unius est exclusio alterius,* the express mention of one thing of a type necessarily excludes others of that type. *(US. v. Vann* (2002) 535 U.S. 55, 64; Black's Law Dictionary.) For example, a statute that expressly grants authority in one particular circumstance implies that the authority is prohibited in other circumstances. The expression-exclusion rule has been repeatedly applied by the United States Supreme Court and the Supreme Court of California to statutes, ordinances, wills, and private contracts.

This bill states that prison officials may open and inspect outgoing inmate mail.for *the purpose of enforcing a restraining or protective order.* This bill expressly gives prison authorities authorization to open and inspect outgoing mail in one circumstance, and does not mention any other circumstance that prison authorities may be authorized to to open and inspect mail. Thus, in applying the expression-exclusion rule. this bill means that prison authorities may *only* open and inspect outgoing inmate mail to enforce a restraining or protective order, *and excludes any and all other reasons to open and inspect outgoing inmate mail.* This is especially true in light of the statutory scheme in which this bill is placed, which enumerates inmates' statutory civil rights. (Pen. Code§§ 2600, 2601.) Read in conjunction with these statutory provisions, this bill implies that inmates have a statutory right to send outgoing mail and that prison authorities can only infringe that right for the narrow purpose of enforcing a protective or restraining order. *(Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit* (1993) 507 U.S. 163, 168; *Dyna-Med, Inc. v. Fair Employment & Housing Com.,* (1987) 43 Cal. 3d 1379, 1391.)

Prison officials have numerous reasons for inspecting outgoing inmate mail including their confidential correspondence with members of the State Bar. Indeed, officers often inspect outgoing packages for contraband, weapons, and evidence of gang affiliation, criminal activity, and rules violations. This bill would limit their ability to do so, which would endanger the safety and security of the institution, and ofrecipients of inmate mail.

d) *Inconsistency within the Statutory Scheme:* Penal Code Section 2601, commonly known as the Prisoners' Bill of Rights, enumerates specific civil rights of inmates in state prison. Section 2601 does not include provisions about inmate's right to send or receive non-confidential mail, and is silent about whether prison officials may inspect non-confidential incoming and outgoing mail. Such provisions are not necessary because it is clear that inmates have no expectation of privacy in their communications and prison officials are constitutionally permitted to monitor prisoners' communications and inspect incoming and outgoing mail. *(People v. Loyd* (2002) 27 Cal.4th 997, 119.)

This bill would add a provision to subdivision (c) of Section 2601, which outlines inmates' rights to purchase, receive, and read newspapers, periodicals, and books. (Pen. Code§ 2601 subd. (c).) Subdivision (c) specifically limits the right of inmates to receive publications that are obscene, incite violence, and concern gabling. Subdivision (c) also clarifies that and the right of prisoners to receive periodicals does not limit the authority of prison officials to open and inspect packages received by an inmate and establish reasonable restrictions on the amount of publications an inmate may have in his or her cell at one time. *(Id.)* This bill would add a provision to subdivision (c) about opening

and inspecting outgoing mail for the purposes of enforcing a restraining or protective order against an inmate. This bears no logical relationship to an inmate's right to receive periodicals. Otherwise put, this bill would add a provision relating to protective orders to subdivision (c), which concerns periodicals. Thus, this bill is incongruent with the statutory scheme and purpose of Section 2601 subdivision (c).

5) **Argument in Support:** According to the Riverside Sheriffs' Association, "SB 1146 was introduced in response to complaints raised by Riverside residents who consistently receive harassing letters in the mail from incarcerated individuals, in violation of existing restraining orders in place.

"Existing law prohibits a restrained person from communicating with a protected individual, but provides no mechanism to prevent these types of illicit communications. Additionally, current law is also silent on whether jail and prison officials may lawfully intercept these illegal and harassing letters. This results in these victims being forced to endure constant emotional trauma with no hope of relief.

"SB 1146 establishes a simple, yet effective means to facilitate the enforcement of a court ordered restraining or protective order against the inmate by granting corrections officials the authority to inspect outgoing mail from incarcerated and restrained persons.

6) Related Legislation:

a) AB 2533 (Stone) would deem an inmate indigent if the inmate has maintained a trust account with twenty-five dollars or less for 30 consecutive days and states that the indigent inmate shall be provided with sufficient resources to communicate with and access the courts, including, but not limited to, stamps, writing materials, envelopes, and paper. AB 2533 is pending referral in Senate Rules.

b) AB 1735 (Cunningham) would require the court to consider issuing a protective order in all cases in which a criminal defendant has been convicted of human trafficking with the intent to obtain forced labor or services, and pimping or pandering. AB 1735 is pending referral in Senate Rules.

c) SB 1089 (Jackson), would clarify that all protective orders subject to transmittal to the California Law Enforcement Telecommunications are required to be so transmitted. SB 1089 is pending in Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California
Riverside Sheriffs' Association

Opposition

None

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

Date of Hearing: June 12, 2018
Counsel: Liah Burnley

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

SB 1160 (Hueso) - As Amended April 16, 2018

SUMMARY: Makes entering a gaming facility on a federally recognized Indian tribe after receiving an order of exclusion from the tribal government, a misdemeanor offense. Specifically, **this bill:**

1) States that a person who willfully commits trespass and is guilty of a misdemeanor by entering a gaming facility on the Indian lands of a federally recognized Indian tribe after receiving an order of exclusion from the tribal government.

2) Defines "gaming facility" as "a gaming facility defined in each federally recognized Indian tribe's tribal-state gaming compact."

3) Defines "order of exclusion" as "a written order issued by the designated agency of the tribal government of a federally recognized Indian tribe, prohibiting a person from entering a gaming facility on the tribe's Indian lands."

4) Permits a federally recognized Indian tribe to enter into an agreement with law enforcement agency for services to enforce an order of exclusion unrelated to the gaming facility.

5) States that if the order of exclusion pertains to a labor organization or its representatives or eligible employees engaged in otherwise lawful labor activity, the tribe shall first obtain a decision from the Tribal Labor Panel stating that the order of exclusion does not conflict with the tribe's labor relations ordinance or labor contract.

EXISTING LAW:

1) Provides that a person who commits any of the following acts is guilty of trespass:

   a) Without permission of the landowner, willfully entering any land under cultivation or enclosed by fence, belonging to, or occupied by, another, or willfully entering uncultivated or unenclosed lands where signs forbidding trespass are displayed, an infraction punishable by a $75 fine; and (Pen. Code § 602.8.)

   b) Entering land under cultivation or enclosed by a fence belonging to or occupied by another and refusing to leave the lands upon request by the owner; entering and occupying any real property or structure without the consent of the owner or person in lawful possession; entering any land for the purpose of obstructing lawful business or occupation of the owner or person in lawful possession of the land; entering land that has been declared closed to entry; entering private property, whether or not open to the public, after having been informed by a peace officer at the request of the owner, that the

property is not open to the particular person, if the person has been convicted of a crime on the property, are all misdemeanor offenses. (Pen. Code§ 602.)

2) States that intentionally interfering with any lawful business or public agency open to the public, obstructing or intimidating those attempting to carry on business, or their customers, and refusing to leave the premises of the business after being requested to leave by the owner owner's agent, office manager, supervisor, peace officer acting at the request of the owner, owner's agent, office manager, or supervisor, is a misdemeanor, punishable byimprisonment in a county jail for up to 90 days, or by a fine of up to $400, or both. (Pen. Code§ 602.1.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement:** According to the author, "Trespassing at Indian gaming facilities is continuous problem that poses a serious threat to public safety. Individuals who have been issued an order of exclusion, have been asked to leave the gaming facility for a variety of reasons including: intoxication, counterfeiting, harassment, theft, and others.

   "Tribal governments invest millions in strong security and surveillance protocols to make sure gaming customers, employees and the community at large are safe from bad actors, but these efforts are only effective if law enforcement enforces orders of exclusions issued by tribal governments. Given the current environment, it is critical that tribal governments have the ability to exclude bad actors from their facilities and for their orders to be enforced by law enforcement.

   "This bill is a simple law and order measure that will add to the security and enjoyment of casino patrons and employees statewide."

2) **Existing Law Provides Sufficient Protection and Prosecution for Criminal Trespass on Tribal Land:** Under Public Law 280 (1953), California has jurisdiction over offenses committed by or against Indians on all Indian lands within the State to the same extent it has jurisdiction over offenses committed elsewhere in the State. Public Law 280 further specifies that the criminal laws of California have the same force and effect within Indian lands as they have elsewhere in the State. In other words, the criminal laws of California extend to Indian lands within the state. (18 U.S.C. § 1162 subd.(a).)

   Prosecutors and law enforcement may enforce criminal trespasses at Indian gaming facilities to the same extent they can enforce criminal trespass at any business not located on Indian land. For misdemeanor trespass, the penalty can range from up to six months of jail time, a $1,000 fine, probation, and a criminal record. In addition to trespass, a prosecutor may charge a person with any other applicable offense believed to be committed at the gaming facility such as theft or intentionally interfering with a lawful business. If a person commits all the acts that constitute trespass as defined in one of the many Penal Code sections, a state or local law enforcement officer can in fact enforce the provisions of the state law, whether or not the offense occurs on Indian land, and whether or not there is an order of exclusion against the suspected trespasser. There is no valid reason for the creation of a special category of trespass as it is currently illegal pursuant to the Penal Code, which provides adequate protection against this offense.

Indian tribes also have inherent authority to operate tribal law enforcement agencies with the power to enforce tribal criminal law against Indians on their sovereign land and to detain and tum over to state or local authorities non-Indians who commit suspected offenses on reservation. *(Cabazon Band of Mission Indians v. Smith* (1998) 34 F. Supp. 2d 1195.) Thus, Indian governments seeking to prohibit certain conduct, such as entering a gaming facility while under an order of exclusion, could choose to do so without need for state legislation. For example, entering or remaining on tribal property after being issued a written order of exclusion by the Rincon Tribal Court is trespass under Rincon Band of Luisefio Mission Indian's Tribal Code section 15.200. *(See* https://www.rincontribe.org /tribal -law.) In *Duro v. Reina,* the Supreme Court addressed the authority of tribal law enforcement to detain non-Indians, holding that tribes possess "traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands," and therefore "where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities." *(Duro v. Reina* (1990) 495 U.S. 676.)

Plainly stated, local, state and tribal law enforcement have the authority to enforce criminal trespass violations. It is a falsehood to suggest that law enforcement officers are prevented from enforcing criminal trespass laws on Indian land because all of California's criminal laws have applied to Indian country since 1953.

3) **This Bill Gives State and Local Law Enforcement Official's Authorization to Enforce Tribal Orders:** State and local law enforcement officers have the authority to enforce public offences. (Pen. Code, § 836.) A crime or public offense is an act committed or omitted in violation *of a law* forbidding or commanding it. (Pen. Code, § 15,16.) Public offenses include felonies, misdemeanors and infractions. *(Id.)* Violating a tribe' s order of exclusion is not a public offense. As such, law enforcement officers do not have the authority to enforce the orders.

An attorney general opinion answered the question of what action a county sheriff could take to enforce an order of exclusion. As stated in the opinion, "The provisions of [the penal code] may be enforced on the reservation where the terms thereof are independently applicable." (96 Ops.Cal.Atty.Gen. (1996) 609, available at https://oag.ca.gov/system/files/opinions/ pdfs/96-609.pdD Thus, a county sheriff can enforce misdemeanor trespass, as defined in the pena l code, on Indian land. The op inion further explains, "Tribal code provisions and orders, on the other hand, do not constitute the criminal laws of the state and have no force and effect elsewhere within California. Such tribal code provisions and orders are not enforceable by a county sheriff either within or without the reservation." *(Id.)*

This bill would give California state and local law enforcement officials the authority to go into an Indian gaming facility, located on sovereign Indian land, to arrest a person and to prosecute that person in a California superior court for misdemeanor trespass-simply because the person violated a tribal order that has does not have any force of law in the State of California.

Tribal orders of exclusion are not federal or state law and there is not a single provision in California law that recognizes an order of exclusion as the law. Notably, orders of exclusion

are merely written orders that can be issued by *any person,* agency. hoard. committee. commission, or council so designated under tribal law. These orders prohibit individuals from entering a gaming facility on the tribe's Indian lands. Though this bill requires that the person against whom the order was obtained was provided "reasonable notice" and an "opportunity to be heard," there is no guarantee that these orders are issued in conformity with California's standards of due process and fundamental fairness. Indeed, these orders of exclusion could be discriminatorily, arbitrarily, or capriciously issued by the tribe in order to banish certain individuals from the gaming facilities. "The old Roman custom of ostracizing a citizen has not been adopted in the United States." *(People v. Blakeman* (1959) 170 Cal. App. 2d 596.) Nothing in state law defines the conduct required before a tribe can issue an order of exclusion. Worse, individuals who receive an order of exclusion have no recourse in state court, or under any provision of state law, to challenge the order. Legitimizing these orders of exclusion by giving them the force of State law, and authorizing California state and local law enforcement officials to enforce them, is not sound public policy.

4) **Argument in Support:** According to the *Federated Indians ofGraton Rancheria,* "This bill would ensure that there are no legal barriers to county prosecution of persons who knowingly violate lawful tribal exclusion orders from a tribe's gaming facility.

"Californian's Indian tribes cooperate greatly with the state by operating under gaming compacts which, among other things, require tribes to maintain programs for exclusion anJ self-exclusion from their casinos. However, the tribes cannot do more than require a trespasser to leave the premises. Prosecution for trespassing is within the sole authority of the district attorney, and many district attorneys have failed or refused to prosecute trespassers on Indian lands for a variety of reasons. Senate Bill 1160 would add a provision to Section 602 of the Penal Code which would remove any daunt about the authority of the state to prosecute knowing violations of lawful tribal exclusion orders This is an important law and order measure which should add to the security and enjoyment of the patrons and employees of our gaming facilities statewide."

5) **Argument in Opposition:** According to *Yocah Dehe Wintun Nation,* "recent amendments to the legislation would purport to invade our tribal sovereignty not strengthen its exercise.

"Under this bill, individuals who enter tribal lands without tribal consent - and in fact, who do so in the face of an exclusion order from the tribal government - would be subject to arrest and prosecution for misdemeanor trespass. This is meaningful, because one of the more fundamental rights and powers of an Indian tribal government is to control access to, and exclude unwanted persons from, their sovereign lands, including the business enterprises they own and operate.

"In Public Law 280 state, tribes must rely upon local law enforcement to enforce these rights of exclusion, as Yocha Dehe is able to do through its strong working relationship with local law enforcement.

"Fundamentally, sovereign tribes cannot be forced to ask a third party for permission to exercise their sovereign right, to wit, to issue orders to exclude unwanted persons from their own land.

"Yocha Dehe cannot support a process that would purport to diminish its sovereignty beyond that to which it previously agreed by Compact."

6) Prior Legislation:

a) SB 331 (Romero), of the 2007-08 Legislative Session, would have created an infraction, for any person who willfully enters upon Indian lands after having received written notice forbidding trespassing. SB 331 failed passage in Assembly Appropriations Committee.

b) SB 804 (Hollingsworth), of the 2007-08 Legislative Session, would have created a new six-month misdemeanor against those persons who committed trespass by interfering with a business and thereafter returned to the business within six months after being requested not to do so. SB 804 was held in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Nations Indian Gaming Association (Sponsor)
Blue Lake Rancheria
Cachil Dehe Band of Wintin Indians of the Colusa Indian Community
California Tribal Business Alliance
California State Sheriffs Association
Chemehuevi Indian Tribe
Chicken Ranch Rancheria of Me-Wuk Indians of California
Coyote Valley Band of Pomo Indians
Elk Valley Rancheria
Federated Indians of Graton Rancheria
Jamul Irtdian Village of California
Karuk Tribe
Morongo Band of Mission Indians
National California Tribal Charmen's Association
Pala Band of Mission Indians
Redding Rancheria
Rincon Band of Luisefio Indians
Robinson Rancheria
San Diego County District Attorney's Office
San Diego County Sheriffs Department
Santa Ynez Band of Chumash Indians
Sherwood Valley Band of Pomo Indians
Shingle Springs Band of Miwok Indians
Soboba Band of Luisefio Indians
Southern California Tribal Chairmen's Association, Inc.
Susanville Indian Rancheria
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria
Tolowa Dee-ni' Nation
Tule River Tribe
Twenty-Nine Palms Band of Mission Indians

Unite Here AFL-CIO
United Nations Pomo Council

Opposition

Barona Band of Mission Indians
Yocha Dehe Wintun Nation

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

Date of Hearing: June 12, 2018
Chief Counsel: Gregory Pagan

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

SB 1163 (Galgiani) - As Amended April 16, 2018

SUMMARY: Requires that all postmortem examinations and autopsies conducted upon an unidentified body or human remains be conducted by an attending physician and surgeon or chief medical examiner that is a board-certified pathologist. Specifically, **this bill:**

1) Requires that a postmortem examination or autopsy upon an unidentified body or human remains to only be conducted by an attending physician and surgeon or chief medical examiner who is a board-certified forensic pathologist.

2) States that an agency tasked with the exhumation of a body or skeletal remains of a deceased person that has suffered significant deterioration or decomposition, where the circumstances surrounding the death afford a reasonable basis to suspect that the death was caused by or related to the criminal act of another, shall perform the exhumation under the direction of a board-certified forensic pathologist and would authorize that board-certified forensic pathologist to retain the services of an anthropologist.

3) Requires an attending physician or surgeon conducting a post mortem examination or autopsy to comply with the same procedural requirements that are required to be observed by a coroner or medical examiner.

4) Requires that the body of an unidentified deceased person shall not be cremated or buried until appropriate sample of tissue or bone is taken by an attending physician and surgeon or the chief medical examiner who is board certified forensic pathologist for future possible use, including, but not limited to, identification purposes, and allows the above persons to determine the appropriate sample types to be taken.

5) Defines "attending physician or surgeon" for the purposes of the above provisions as "a physician or surgeon licensed to practice medicine in the state performing a postmortem examination or autopsy, as specified."

EXISTING LAW:

1) Requires coroners to determine the manner, circumstances and cause of death in the following circumstances:

   a) Violent, sudden or unusual deaths;

   b) Unattended deaths;

c) When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;

d) When the death is related to known or suspected self-induced or criminal abortion;

e) Known or suspected homicide, suicide or accidental poisoning;

f) Deaths suspected as a result of an accident or injury either old or recent;

g) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;

h) Deaths in whole or in part occasioned by criminal means;

i) Deaths associated with a known or alleged rape or crime against nature;

j) Deaths in prison or while under sentence;

k) Deaths known or suspected as due to contagious disease and constituting a public hazard;

1) Deaths from occupational diseases or occupational hazards;

m) Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;

n) Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;

o) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and,

p) Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

2) Requires the coroner or medical examiner to sign the certificate of death when they perform a mandatory inquiry. (Gov. Code,§ 27491, subd. (a).)

3) Allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)

4) Requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Gov. Code,§ 27520, subd. (a).)

5) Allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Gov. Code,§ 27520, subd. (b).)

6) Specifies that the cost of autopsies requested by the surviving spouse or other specified persons are borne by the requestor. (Gov. Code,§ 27520, subd. (c).)

7) Provides that postmortem examination or autopsy by a coroner, medical examiner or other agency upon an unidentified body or human remains is subject to specified requirements. (Pen. Code,§ 27521, subd. (a).)

8) Requires that a post mortem examination or autopsy on an unidentified body or human remains shall but not be limited to the following procedures:

   a) All available finger and palm prints;

   b) Dental examination;

   c) Collection of tissue including hair sample and DNA sample, if necessary;

   d) Notation and photographs of significant marks, scars, tattoos and personal effects;

   e) Notation of observations pertinent to the time of death; and,

   f) Documentation of the location of the remains. (Gov. Code,§ 27521, subd. (b).)

9) Provides that a forensic autopsy shall only be conducted by a licensed physician and surgeon, and the results of a forensic autopsy only be determined by a licensed physician and surgeon. (Pen. Code,§ 27522 (subd. (a).)

10) Defines a "forensic autopsy" to mean an examination of a body of a decedent to generate medical evidence for which the cause and manner of death is determined. (Pen. Code, § 27522 (subd. (b).)

11) Defines "postmortem examination" to mean the external examination of the body where no manner of death is determined. (Pen. Code,§ 27522 (subd. (c).)

12) States that the manner of death shall be determined by the coroner or medical examiner of a county. If a forensic autopsy is conducted by a licensed physician and surgeon, the coroner shall consult with the physician in detennining the cause of death. (Pen. Code, § 27522 (subd. (d).)

13) Provides that for health and safety purposes, all persons in the autopsy suite shall be informed of the risks presented by blood borne pathogens and that they should wear personal protective equipment, as specified. (Pen. Code, § 27522 (subd. (e).)

14) States that only persons directly involved in the investigation of the death of the decedent shall be allowed into the autopsy suite. (Pen. Code, § 27522 (subd. (f)(l).)

15) Provides that if an individual dies due to the involvement of law enforcement activity, law enforcement directly involved with the death of that individual shall not be involved with any portion of the post mortem examination, nor allowed into the autopsy suite during the

performance of the autopsy. (Pen. Code, § 27522 (subd. (f)(2).)

16) States that at the discretion of the coroner and in consultation with the licensed physician and surgeon conducting the autopsy, individuals may be permitted in the autopsy suite for educational and research purposes. (Pen. Code, § 27522 (subd. (f)(3).)

17) Requires that any police reports, crime scene or other information, videos, or laboratory test that are in the possession of law enforcement and are related to a death that is incident to law enforcement activity be made available to the forensic pathologist prior to the completion of the investigation of the death. (Pen. Code, § 27522 (subd. (g).)

18) States that the above autopsy protocol shall not be construed to limit the practice of an autopsy for educational or research purposes. (Pen. Code, § 27522 (subd. (h).)

FISCAL EFFECT: Unknown

COMMENTS:

1) Authors Statement: According to the author, "There are over 25,000 missing and unidentified persons in the California Attorney General's repository of cold cases. Clarifying and updating the law in regards to how to handle investigations and autopsies involving unidentified bodies will also help provide closure to families with missing loved ones.

"With the advancements of science and technology, this bill is necessary to ensure the most accurate information is kept on file in cases of unidentified human remains. In many cases a body can be identified with much less than what was once necessary and required by law. This bill will provide transparency and confidence in the process when an unidentified body or human remains are found.

"Until a few years ago, the only identification process available was to consider the body of evidence gathered from the skeleton, the teeth, and the circumstances, then make a conclusion. Now, however, DNA matching provides positive identification much more readily (usually). There are two types of DNA: *nuclear DNA* and *mitochondrial DNA (mtDNA).* Nuclear DNA is in the nucleus of the cell and it decays as the flesh decays. MtDNA is in the mitochondria, or the wall, of the cell. It survives for a long time and can be recovered from bones.

"Having a forensic pathologist direct the exhumation in the case where the circumstances surrounding the death affords a reasonable basis to suspect that the death was caused by or related to the criminal act of another, helps to ensure maximum recovery and protection of the human skeletal remains; skeletal analysis helps to identify the victim and determine how the victim may have died. Because of the nature of the cases that they work on--victims that are badly decomposed, skeletonized, or when body parts are missing--the forensic pathologist or anthropologist is often the victim's last chance for identification and justice."

2) Prior Legislation:

a) SB 1189 (Pan), Chapter 787, Statutes of 2016, required that a forensic autopsy only be conducted by a licensed physician or surgeon, and the results of forensic autopsy only be determined by a licensed physician or surgeon

b) SB 1066 (Galgiani), Chapter 437, Statutes of 2014, revised, recast, and renumbered several provision of law relating to missing or unidentified persons.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Medical board of California

Opposition

California State Coroners' Association

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

Date of Hearing: June 12, 2018
Counsel: Matthew Fleming

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

SB 1199 (Wilk) - As Amended May 30, 2018

SUMMARY: Provides that an inmate being released from custody on parole or post-release community supervision (PRCS) who was committed to prison for a sex offense for which registration is required, shall through all efforts reasonably possible be returned to the city that was the last legal residence of the inmate prior to incarceration, or a close geographic location in which he or she has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to his or her victim.

EXISTING LAW:

1) Requires that, subject to specified exceptions, an inmate who is released on parole or post-release community supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. (Pen. Code, § 3003, subd. (a).)

2) Allows the Board of Parole Hearings **(BPH)** or the Department of Corrections and Rehabilitation (CDCR) to return an inmate to a county other than the one of last residence if that would be in the best interests of the public; requires BPH or CDCR to place its reasons in writing in the permanent record. (Pen. Code,§ 3003, subd. (b).)

3) States that the paroling authority shall consider the following factors in determining whether or not to return an inmate to his or her last county of residence, giving the greatest weight to the protection of the victim and safety of the community:

a) The need to protect the life or safety of a victim, the parolee, a witness, or any other person;

b) Public concern that would reduce the chance that the inmate's parole would be successfully completed;

c) The verified existence of a work offer, or an educational or vocational training program;

d) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed; or,

e) The lack of necessary outpatient treatment programs for parolees receiving treatment as mentally disordered offenders. (Pen. Code,§ 3003, subd. (b)(l)-(5).)

4) States that an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, specified violent felonies or a

felony in which the defendant inflicts great bodily injury on any person, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if BPH or the CDCR finds that there is a need to protect the life, safety, or well-being of a victim or witness. (Pen. Code, § 3003, subd. (±})

5) Provides that an inmate who is released on parole for a violation of lewd and lascivious acts or continuous sexual abuse of a child, whom the CDCR determines poses a high risk to the public, shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school. (Pen. Code, § 3003, subd. (g).)

6) Requires the following persons released from prison on or after October 1, 2011, be subject to parole under the supervision of CDCR:

a) A person who committed a "serious" felony, as specified;

b) A person who committed a violent felony, as specified;

c) A person serving a Three-Strikes sentence;

d) A high risk sex offender;

e) A mentally disordered offender (MDO);

f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,

g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code,§ 3000.08, subds. (a) & (c).)

7) Requires all other offenders released from prison to be placed on PRCS. (Pen. Code, § 3000.08.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "SB 1199 requires an inmate who is released on parole or post release community supervision who was committed to prison for a registerable sex offense shall through all efforts reasonably possible be returned to the city that was the last legal residence of the inmate prior to incarceration or a close geographic location in which he or she has family, social ties , or other economic ties, unless return to that location would violate any other law or pose a risk to his or her victim.

"The goal of this legislation is to reduce recidivism by always first attempting to place offenders in the community where they have a family or other community connections. The offender's support system needs to be considered when determining placement along with victim and other considerations.

"SB 1199 will keep our communities safer and provide the newly paroled offender with the best possible chance of not re-offending."

2) **Sex Offender Re-Entry After Incarceration:** The Legislature created the Sex Offender Management Board with the enactment of AB 1015 (Chu) Chapter 338, Statutes of 2006. The California Sex Offender Management Board (CASOMB) is made up of members representing various law enforcement entities, judges, and mental health professionals. (Pen. Code, § 9001; http://www.casomb.org/index.cfm?pid=1235.) CASOMB's purpose is to address any issues, concerns, and problems related to the community management of the state's adult sex offenders, with a goal of safer communities and reduced victimization.

CASOMB has produced many publications regarding California's Sex Offender Registry. In 2017, it published an educational pamphlet which discussed some of the issues relating to the reintegration of sex offenders into society following their sentence. (http://casomb.org/pdf/CASOMB Education Pamphlet.pdf [as of June 4, 2018].) The pamphlet notes that sex offenders face a variety of challenges upon release, including the "inability to create prosocial peer networks, being ostracized, being the targets of threats and violence" and "difficulties finding jobs or housing." *(Id.* at 11.)

This bill seeks to return sex offenders to their last city of residence upon release from custody. The effect of this bill is likely to result in the placement of sex offenders in a location where they are less likely to reoffend because they have more access to prosocial networks and services with which they are more likely to be familiar. Nonetheless, there are bound to be situations in which an offender may be more likely to succeed in a new and different location rather than being returned to his or her last city of residence. This bill provides for some flexibility in such situations by providing exceptions and requiring "reasonably possible" placement efforts.

3) **Argument in Support:** According to the *California State Sheriffs' Association:* "On behalf of the California State Sheriffs' Association (CSSA), we are pleased to support ... Senate Bill 1199, which would require consideration of family, social ties or economic ties for a registerable sex offender being released on parole and or post release community supervision (PRCS).

"Employment and housing disruptions, as well as separation from supportive and or dependent family members, can hinder effective treatment and may interfere with tl,e overall goal of reducing recidivism and re-victimization. In order for sex offenders to be successful and not reoffend, it is best for them to have family and community ties rather than being placed in areas unknown or unfamiliar to them."

4) **Argument in Opposition:** According to the *Cal(fornia Attorneys for Criminal Justice:* "There is a universal benefit to successful transition from incarceration to community for every individual being released from incarceration. This is true for those who have been convicted of sex offenses. Often times, productive transition is interrupted by a general rejection of the individual by those living in the community ofrelease, prospective employers and others. While there is an overarching concern about public safety, studies repeatedly confirm that most of those convicted of sex offenses are unlikely to reoffend, especially when proper services and support systems are available to assist with reintegration after release. Unfortunately, SB 1199 eliminates potentially useful flexibility in the reintegration

plans for those convicted of sex offenses. Often reconnection with family or schcJuling release to those counties where the individual previously lived may enhance the chances for successful post-incarceration life. However, every situation is different. There may be cases in which a return to another community would be more beneficial to the individual's opportunity to succeed. Some flexibility in the law allow for the consideration of the facts unique to every case."

5) **Related Legislation:** SB 26 (Leyva), of the 2017-2018 Legislative Session would have altered the restrictions on sex offenders pertaining to their ability to be present on school grounds in order to conduct lawful business. SB 26 was held in the Senate Appropriations Committee.

6) **Prior Legislation:**

a) AB 335 (Kiley) Chapter 523, Statutes of 2017, provided that an inmate who has committed specified crimes and is released on parole shall not be returned to a location within 35 miles of the residence of a victim or witness if the victim or witness makes such a request and BPH or CDCR finds that the placement is necessary to protect the victim or witness.

b) AB 255 (Gallagher), Chapter 39, Statutes of 2017, specified that courts must consider the connections to the community when designating the placement of a sexually violent predator in a county for conditional release.

c) SB 69 (Bates), of the 2017- 2018 Legislative Session would have made it a felony for a sex offender to willfully remove or disable an electronic, global positioning system, or other monitoring device if the person intended to evade supervision. SB 69 failed passage in the Senate Public Safety Committee.

d) SB 1852 (Senate Judiciary Committee), Chapter 538, Statutes of 2006, prohibited an inmate released on parole for a violation of specified sex offenses from being placed or residing within one-quarter mile of any public or private school for the duration of parole.

REGISTERED SUPPORT/ OPPOSITION:

Support

California State Sheriffs' Association

Opposition

California Attorneys for Criminal Justice

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

Date of Hearing: June 12, 2018
Counsel: Sandy Uribe

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

SB 1232 (Bradford) - As Introduced February 15, 2018

SUMMARY: Extends the time limit for a minor victim to file an application for compensation under the California Victim Compensation Program (CalVCP) to within three years after the victim turns 21 years of age. Specifically, **this bill:** Requires an application for compensation to be filed within three years after a minor victim attains 21, instead of 18, years of age.

EXISTING LAW:

1) Establishes the California Victims Compensation Claims Board (board) to operate the CalVCP. (Gov. Code, *§§* 13950 *et. seq.)*

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

3) Requires that an application shall be filed in accordance with the following time lines:

   a) Within three years of the date of the crime;

   b) Three years after the victim attains 18 year of age;

   c) Three years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered than an injury or death had been sustained as a direct result of crime, whichever is later; or,

   d) If the application is based on one of the specified sex crimes against minors, the application may be filed any time prior to the victim's 28th birthday. (Gov. Code, § 13953, subd. (a).)

4) Allows the board to grant an extension of the applicable time period for good cause. In making this determination , the board shall consid er all of the foll owing:

   a) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime; and

   b) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration. (Gov. Code, § 13953, subd. (b).)

5) Allows the board to deny an application if the victim or derivative victim fails to cooperate in the verification of information contained in the application. (Gov. Code. § 13954. subd. (b)(l).)

6) States that, except as provided by specified sections of the Government Code, a person is eligible for compensation when all of the following requirements are met:

   a) The person for whom compensation is being sought is a victim, a derivative victim, or a person who is entitled to reimbursement for funeral, burial or crime scene clean-up; and,

   b) Either of the following conditions is met:

      i) The crime occurred within California, whether or not the victim is a resident of California, or

      ii) Whether or not the crime occurred in California, the victim was any of the following:

         (1) A California resident;

         (2) A member of the military stationed in California; or,

         (3) A family member living with a member of the military stationed in California.

   c) If compensation is being sought for derivative victim, the derivative victim is a resident of California, or the resident of another state who is any of the following:

      i) At the time of the crimes was the parent, grandparent, sibling, spouse, child or grandchild of the victim.

      ii) At the time of the crime was living in the household of the victim.

      iii) At the time of the crime was a person who had previously lived in the house of the victim for a person of not less than two years in a relationship substantially similar to a previously listed relationship.

      iv) Another family member of the victim including, but not limited to, the victim's fiance or fiancee, and who witnessed the crime.

      v) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

   d) And other specified requirements, including that the application is timely. (Gov. Code, § 13955.)

7) Disqualifies certain individuals from eligibility. (Gov. Code, § 13956.)

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

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

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

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

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

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

t) The expense of renovating or retrofitting a victim's residence or vehicle to make them accessible or operational, if it is medically necessary;

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

h) Funeral or burial expenses. (Gov. Code,§§ 13957, subd. (a) & 13957.5, subd. (a).)

9) Limits the total award to or on behalf of each victim or derivative victim to $70,000. (Gov. Code,§§ 13957, subd. (b), & 13957.5, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "Both youth under the age of 18 and young adults between the ages of 18-24 are particularly vulnerable following victimization.

"Youth who have missed work or school to recover should receive financial support for counseling, therapy, and education or hospital bills. Reimbursement from CalVCB can be used to help pay for these and other essential expenses such as food, rent, and transportation.

"Stigma, depression, self-blaming, and lack of support are examples of barriers that contribute to the difficulty in addressing these traumas, especially for youth from marginalized, low-income, minority, and immigrant communities. Unfortunately, an understandable delay on the part of a youth or young person becoming comfortable seeking victim compensation can result in them not being eligible for this crucial assistance.

"SB 1232 will afford victims of crime more time to apply for victim's compensation, allowing youth and young adults to receive the support and care they need. Ultimately, this bill will help prevent the cycle of crime and victimization, helping individuals, families, and communities heal."

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

3) **Timeliness of Application for Compensation:** An application for compensation must be filed in a timely manner. Timeliness of the application is specified in statute requiring the application to be filed three years of the date of the crime, three years after the victim attains 18 years of age, or three years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. In addition, applications for compensation based certain sex crimes against minors may be filed any time prior to the victim's 28th birthday. (Gov. Code,§ 13953, subd. (a).) The board may however, for good cause, grant an extension of the specified time periods under some circumstances. (Gov. Code,§ 13953, subd. (b).)

   This bill would extend the time limit to file an application for compensation within three years after a victim attains age 21, instead of 18. All other time periods remain unchanged.

4) **Argument in Support:** According to the *California Chapter of the National Association of Social Workers,* "Youth under the age of 18 and young adults between the ages of 18 and 24 are particularly vulnerable following victimization. The trauma that young crime victims experience can create a negative neurological response in their developing brain, affecting their ability to focus, organize, and process information. This often has a lasting impact on their rate of maturation, and educational, and career development. Youth who have missed work or school to recover from trauma should receive financial support for counseling, therapy, education, hospital bills and other essential expenses such as food, rent, and transportation.

   "Stigma, depression, self-blaming, and lack of support are examples of barriers that contribute to the difficulty in addressing these traumas, especially for youth from marginalized, low-income, minority, and immigrant communities. SB 1232 will afford victiins of crime an increased opportunity to receive support and care they need. Ultimately, this bill will help prevent the cycle of crime and victimization, helping individuals, families, and communities heal."

5) **Related Legislation:**

   a) AB 900 (Gonzalez Fletcher) authorizes the board to provide compensation equal to loss of income or support to human trafficking victims, as specified. AB 900 is pending in the Senate Appropriations Committee.

   b) AB 1939 (Steinorth) includes temporary housing for the victim's pets as part of relocation expenses which are reimbursable by the board. AB 1939 is pending referral by the Senate Rules Committee.

c) SB 1005 (Atkins) includes a pet deposit and additional rent required if the victim has a pet in relocation expenses reimbursable by the board. SB 1232 will be heard in this Committee today.

6) **Prior Legislation:** AB 1061 (Gloria), of the 2017-2018 Legislative Session, would have, in pertinent part, conformed the application deadline for victims of sex crimes to the statute of limitations for those crimes. AB 1061 was held on the Assembly Appropriations Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
California Catholic Conference
California District Attorneys Association
Community Hospice
Joyful Heart Foundation
National Association of Social Workers - California Chapter

Opposition

None

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