California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, June 13, 2023
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	SB 78	Glazer	Criminal procedure: factual innocence.
2.	SB 86	Seyarto	Crime victims: resource center.
3.	SB 250	Umberg	Controlled substances: punishment.
4.	SB 290	Min	Domestic violence documentation: victim access.
5.	SB 359	Umberg	Prisons: credits: recidivism report.
6.	SB 376	Rubio	Human trafficking: victim rights.
7.	SB 400	Wahab	Peace officers: confidentiality of records.
8.	SB 412	Archuleta	Parole hearings.
9.	SB 417	Blakespear	Firearms: licensed dealers.
10.	SB 448	Becker	Juveniles: detention hearings.
11.	SB 545	Rubio	Juveniles: transfer to court of criminal jurisdiction.
12.	SB 602	Archuleta	Trespass.
13.	SB 762	Becker	Local detention facilities: safety checks.
14.	SB 852	Rubio	Searches: supervised persons.

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: June 13, 2023
Counsel: Liah Burnley

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

SB 78 (Glazer) – As Amended June 6, 2023

SUMMARY: Authorizes a person to move the court for a finding that they are entitled to approval of a claim for wrongful conviction compensation. Specifically, **this bill**:

1) Provides that, if the court has granted a writ of habeas corpus or vacated a judgment, and the charges against the person have been dismissed or the person has been acquitted on retrial, the person may move the court for a finding that they are entitled to approval of a claim for wrongful conviction compensation.

2) Requires the court to grant the motion, unless the district attorney objects to the motion within 15 days, and can establish by clear and convincing evidence that the person committed the acts constituting the offense and is therefore not entitled to wrongful conviction compensation.

3) States that a conviction reversed and dismissed is no longer valid, thus the district attorney may not rely on the fact that the state still maintains that the person is guilty of the crime, that the state defended the conviction, or that there was a conviction to establish that the person is not entitled to wrongful conviction compensation. The district attorney may not rely solely on the trial record to establish that the person is not entitled to wrongful conviction compensation.

4) Provides that the district attorney may request a single 30-day extension of time upon a showing of good cause to object to the motion, and an extension beyond this period may be given if agreed upon by stipulation between parties.

5) Requires the court to grant the motion if the district attorney does not object or if the district attorney fails to meet its burden to establish by clear and convincing evidence that the person committed the offense.

6) Provides that, if the motion is granted, upon application by the person, the California Victim Compensation Board (CalVCB), shall without a hearing, approve wrongful conviction compensation payment to the person, if sufficient funds are available, upon appropriation by the Legislature.

7) States that the district attorney shall provide notice to the Attorney General (AG) no fewer than seven days prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate the judgement. Clarifies that a response from the AG is not required to proceed with the stipulation.

8) Extends the deadline for CalVCB to calculate compensation and approve wrongful conviction compensation payment from 30 days to 90 days.

9) Allows the AG to request an extension of the 45-day deadline to object to specified applications for wrongful conviction compensation before CalVCB. Time needed to obtain and review juvenile records may establish good cause for an additional 45-day extension upon a showing that through the exercise of due diligence the AG's office is unable to obtain sufficient documents for the review.

10) Extends the deadline for CalVCB to approve payment from 60 days to 90 days, for claims for wrongful conviction compensation where the AG is authorized, but declines to object.

11) Allows CalVCB to request additional documents or arguments from both parties as needed to calculate wrongful conviction compensation payments.

12) Makes technical and conforming changes that delete the requirement that CalVCB recommend to the Legislature that an appropriation be made and the claim for of wrongful compensation be paid, and instead requires CalVCB to approve payment of wrongful compensation claims, as specified, if sufficient funds are available upon appropriation by the Legislature.

EXISTING LAW:

1) Provides that, in any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the person may, at any time after dismissal, petition the court for a declaration of factual innocence, as specified. (Pen. Code, §§ 851.8, subds. (b)-(d), 851.86.)

2) Provides that, if a person has secured a declaration of factual innocence from the court the finding shall be sufficient grounds for payment of wrongful conviction compensation. Upon application by the person, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim be paid, as specified. If a declaration of factual innocence is granted pursuant to a stipulation of the prosecutor, CalVCB has a duty to, without a hearing, recommend to the Legislature payment of the claim. (Pen. Code, § 851.865.)

3) Provides that if a person has secured a declaration of factual innocence from the court, then CalVCB shall, within 30 days of presentation of the claim for wrongful conviction compensation, approve payment if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4902, subd. (a).)

4) Authorizes a person unlawfully imprisoned or restrained to prosecute a writ of habeas corpus, for, but not limited to, the following reasons:

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

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

c) New evidence exists 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 at trial; or,

d) A significant dispute has emerged or further developed in the person's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial. (Pen. Code, § 1473.)

5) Authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment if there is:

a) Newly discovered evidence of fraud by a government official the completely undermines the prosecution's case points unerringly to the person's innocence;

b) Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and was substantially probative on the issue of guilt or punishment; or,

c) There is newly discovered evidence of misconduct by a government official that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. (Pen. Code, § 1473.6.)

6) Authorizes a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence where newly discovered evidence of actual innocence exists. (Pen. Code, § 1473.7, subd. (a)(2).)

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

8) Provides that the district attorney shall provide notice to the AG prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or a motion to vacate. (Pen. Code, § 1485.5, subd. (b).)

9) States that the express factual findings made by the court in considering a petition for habeas corpus, a motion to vacate, or an application for a certificate of factual innocence, shall be binding on the AG, the factfinder, and CalVCB. (Pen. Code, §§1485.5, subd. (c), 4903, subd. (c).)

10) Provides that, if a court grants a writ of habeas corpus or vacates a judgment, and the court has found that the person is factually innocent, that finding shall be binding on the CalVCB for a claim presented to it for wrongful conviction compensation, and upon application by the person, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation

be made and the claim for wrongful conviction compensation be paid, as specified. (Pen. Code, § 1485.55, subd. (a).)

11) Provides that if a court has granted a writ of habeas corpus or vacated a judgment , and the court has found that the person is factually innocent, CalVCB shall, within 30 days of presentation of the claim for wrongful conviction compensation, approve payment if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4902, subd. (a).)

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

13) Provides that if a court has granted a writ of habeas corpus or vacated a judgment, and the court makes a finding that the person has proven their factual innocence by a preponderance of the evidence, CalVCB shall, within 30 days of presentation of the claim for wrongful conviction compensation, approve payment if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4902, subd. (a).)

14) Provides that, if a federal court, after granting a writ of habeas corpus finds the person factually innocent by no less than a preponderance of the evidence that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, CalVCB shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim for wrongful conviction compensation be paid. (Pen. Code, § 1485.55, subd. (e).)

15) Provides that, if a court grants a writ of habeas corpus or vacates a judgment, and the court has not found that the person is factually innocent, and the charges were subsequently dismissed, or the person was acquitted of the charges on a retrial, CalVCB shall, upon application by the person, and without a hearing, approve payment for wrongful conviction compensation, if sufficient funds are available, upon appropriation by the Legislature, unless the AG objects in writing, within 45 days from when the person files the claim. Upon receipt of the objection, CalVCB shall set a hearing on the claim, as specified. At the hearing, the AG bears the burden of establishing with clear and convincing evidence that the person is not entitled to compensation and that the person committed the offense. The person may introduce evidence in support of their claim. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), & 4903, subd. (b).)

16) States that a conviction reversed and dismissed is no longer valid, thus the AG may not rely on the fact at the hearing before CalVCB that the state still maintains that the person is guilty of the crime, that the state defended the conviction through court litigation, or that there was a conviction to establish that the person is not entitled to compensation. The AG may also not rely solely on the trial record to establish that the person is not entitled to compensation. (Pen. Code, § 4903, subd. (d).)

17) Requires, if the evidence shows that person did not commit the offense, or if the AG has not met the burden of proving by clear and convincing evidence that the person committee the offense, and CalVCB has found that the person sustained injury through their erroneous conviction and imprisonment, CalVCB to approve payment for wrongful conviction compensation if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4904, subd. (a).)

18) Sets the amount of the payment for wrongful conviction compensation at $140 per day of incarceration served, as specified. (Pen. Code, § 4904, subd. (a).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "The signing of SB 446 into law created a more just and equitable compensation process by transferring the responsibility of proof from the wrongfully convicted individual to the Attorney General in compensation proceedings that proceed in front of the Victim's Compensation Board. Individuals who have claimed compensation are granted the presumption of innocence by law if their conviction has been overturned. Current law requires the Attorney General to object to only those claims in which they believe the person should not be compensated. If the Attorney General chooses to object to the individual's claim, there must be sufficient, clear, and concise evidence proving the decision to not grant compensation.

   "However, while SB 446 constructed a fair shift to the Attorney General's office in compensation proceedings in front of the VCB, the law did not allocate the burden to the District Attorney's office if a wrongfully convicted person instead chose to pursue the existing process through the court.

   "This oversight has unintentionally tipped the scales to a more fair and efficient process in the VCB rather than having the same fair and efficient process in the court. The potential for incentivizing wrongfully convicted individuals to go through the VCB rather than the courts, likely places an unbalanced burden on the Attorney General's office to handle these cases rather than them being equitably distributed through the processes."

2) **Wrongful Conviction Compensation**: Proponents have characterized this bill as creating parity between "California's two compensation systems." However, California does not have two compensation systems. Pursuant to Penal Code sections 4900 through 4906, CalVCB is the sole agency responsible for processing claims from persons seeking compensation for wrongful convictions. The amount of the payment is $140 per day of incarceration served. (Pen. Code, § 4904, subd. (a); see also CalVCB, *Claims for Erroneously Convicted Persons* <https://victims.ca.gov/legal/pc4900/> [June 1, 2023].)

   Whether CalVCB will process a claim without a hearing depends on if a court has found the person factually innocent. If the person has first obtained a declaration of factual innocence from a court, this finding is binding on the CalVCB. (Pen. Code, §§ 851.86, 851.865, 4902, subd. (a)). No hearing is required; the finding is sufficient grounds for payment of compensation. (*Ibid.*) Similarly, if the court has granted a writ of habeas corpus or vacated a judgment, and in either of those proceedings found that the person is factually innocent, the

finding is binding on the CalVCB and is sufficient grounds for payment of compensation without a hearing. (Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).) Additionally, a person who has had a writ of habeas corpus granted or their judgment vacated can move the court for a finding of factual innocence prior to submitting a compensation claim to CalVCB. (Pen. Code, §§ 1485.55, subd. (b).) In this instance, the person has the burden in court to prove by a preponderance of the evidence that they did not commit the crime. (*Ibid.*) If the court grants the motion and finds the person factually innocent, the finding is binding on CalVCB and is sufficient grounds for payment of compensation without a hearing. (Pen. Code, § 4902, subd. (a).) Otherwise put, "a recommendation for compensation [by CalVCB is] automatically mandated without a hearing and within 30 days, if a court has found the claimant to be factually innocent of the challenged conviction. (CalVCB, *Claims for Erroneously Convicted Persons* <https://victims.ca.gov/legal/pc4900/> [June 1, 2023].)

Alternatively, for all other claims, CalVCB may be required to hold a hearing. (Pen. Code, § 4900, subd. (a).) In claims where a court has granted a writ of habeas corpus or a motion to vacate, but the court did not find the person factually innocent, CalVCB is required to, without a hearing, approve payment to the claimant if sufficient funds are available, upon appropriation by the Legislature, unless the AG objects to the claim. (Pen. Code, §§ 4900 subd. (b), 4902, subd. (d), 4903, subd. (b).) Upon receipt of the AG's objection, CalVCB must set a hearing of the claim (*Ibid.*) At a hearing, the AG bears the burden of proving by clear and convincing evidence that the person committed the offense, and is therefore not entitled to wrongful conviction compensation. (*Ibid.*) If the AG fails to meet this burden, CalVCB is required approve payment, if sufficient funds are available upon appropriation by the Legislature. (*Ibid.*) "[A] recommendation for compensation is required absent clear and convincing proof of the claimant's guilt." (CalVCB, *Claims for Erroneously Convicted Persons* <https://victims.ca.gov/legal/pc4900/> [June 1, 2023].)

This bill would create an additional pathway for individuals who did not obtain a finding of factual innocence in court, to get wrongful conviction compensation from CalVCB without a hearing at CalVCB. Specifically, this bill would allow, if the court has granted a writ of habeas corpus or vacated a judgment, the person may move the court for a finding that they are entitled to approval of a claim for wrongful conviction compensation. If the court grants the motion, the finding would be binding on CalVCB, and upon application, CalVCB would be required to approve payment the claim, without holding a hearing. In so doing, this bill would allow individuals who have had their convictions overturned, but have not been found factually innocent by the court, to choose to litigate their entitlement to wrongful conviction compensation in court or at CalVCB. In either case, the person would still be required to apply to CalVCB for payment of the claim.

3) **Parity with SB 466 (Glazer)**: SB 446 (Glazer), Chapter 490, Statues of 2021, which passed the Legislature with bipartisan support, changed the process within CalVCB related to hearings for wrongful conviction compensation claims by shifting the burden onto the AG to prove that the person is not entitled to compensation.

   As discussed above, this bill would create an additional route for individuals to obtain wrongful conviction compensation in cases where their conviction has been overturned, but the court has not issued a finding of factual innocence. This bill would authorize these individuals to choose to litigate the issue of their entitlement to wrongful conviction compensation in court against the district attorney, instead of against the AG before CalVCB.

This bill puts similar requirements on the district attorney litigating the matter in court, as the requirements SB 446 put on the AG litigating the matter before CalVCB. Specifically, this bill includes the following:

- This bill requires the court to grant the motion, unless the district attorney objects within 15 days. In comparison, SB 446 required CalVCB to approve the claim unless the AG objects within 45 days. (Pen. Code, § 4902, subd. (d).)

- This bill requires the district attorney to establish by clear and convincing evidence that the person committed the offense. In comparison, SB 446 provided that the AG must establish by clear and convincing evidence that the person committed the offense. (Pen. Code, § 4902, subd. (d).)

- This bill requires the court to grant the motion if district attorney fails to meet its burden. This bill further provides that if the motion is granted, upon application, CalVCB is required to approve the claim for wrongful conviction compensation. In comparison, SB 446 provided that, if the AG fails to meet its burden, CalVCB is required to approve the claim for wrongful conviction compensation. (Pen. Code, §§ 4904 & 4902, subd. (d).)

- This bill states that the district attorney may not rely on the fact that the state still maintains that the person is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the person through court litigation, or that there was a conviction to establish that the person is not entitled to compensation. The district attorney may not rely solely on the trial record to establish that the person is not entitled to compensation. In comparison, SB 446 provided that, the AG not rely on the fact that the state still maintains that the person is guilty of the crime for which they were wrongfully convicted, that the state defended the conviction against the person through court litigation, or that there was a conviction to establish that the person is not entitled to compensation. The AG may not rely solely on the trial record to establish that the claimant is not entitled to compensation. (Pen. Code, § 4903 (d).)

4) **Veto of SB 981 (Glazer)**: SB 981 (Glazer), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 981 received bipartisan support in the Legislature, but was vetoed by the Governor. The Governor's veto message explained:

> The 2022 Budget included an improvement in the payment process for the erroneously convicted, allowing them to receive their compensation more quickly. This bill would unintentionally reverse part of that new payment process. If this bill is signed, some claimants will have their compensation delayed by several months, or in some cases, up to a year. I look forward to the author submitting a new bill next year on this issue.
>
> For these reasons, I cannot sign this bill.

Specifically, AB 160 (Committee on Budget), Chapter 771, Statues of 2022, changed the process for payment of wrongful conviction compensation. Before AB 160, CalVCB was

statutorily required to report the facts of the case and its conclusions to the Legislature with a recommendation that the Legislature make an appropriation for payment of the claim. For the claim to be paid, an act making an appropriation for the claim had to be introduced by the Legislature, passed by each house, and approved by the Governor.

AB 160 eliminated the requirement for CalVCB to make recommendation for the claim to be paid by the Legislature. Instead, AB 160 authorized CalVCB to directly approve payment to the person, if sufficient funds are available, upon appropriation by the Legislature. In so doing, AB 160 streamlined the process for exonerees to receive wrongful conviction compensation. AB 160 was signed by the Governor and SB 981 was vetoed by the Governor that same day.

SB 981 would have retained language requiring CalVCB to make a recommendation to the Legislature for payment of the wrongful compensation claims. Accordingly, as the Governor indicated in his veto message, SB 981 would have undone some of the changes made by AB 160.

This bill addresses the Governor's concerns and is consistent with the changes made by AB 160. For individuals who secure a court order that they are entitled to wrongful conviction compensation, CalVCB will be required to approve payment, if sufficient funds are available, upon appropriation by the Legislature. This bill also makes necessary conforming changes to related code sections that were not addressed in AB 160, including Penal Code section 851.865, relating to declarations of factual innocence, and Penal Code section 1485.55 subdivisions (a), (c), and (e) relating to findings of factual innocence made by the court in motions to vacate and writs of habeas corpus.

5) **Writs of Habeas Corpus and Motions to Vacate**: The writ of habeas corpus is a process guaranteed by both the federal and state Constitutions to obtain prompt judicial relief from unlawful imprisonment or restraint. After having been released from imprisonment or other restraint, the writ of habeas corpus is no longer available to challenge a conviction. However, other means are available to challenge the conviction. This includes a motion to vacate. (Pen. Code, §§ 1473.6, 1473.7.)

If the district attorney or the AG stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or motion to vacate, the facts underlying the basis for the court's ruling or order are binding on the AG, the factfinder, and CalVCB. (Pen. Code, § 1485.5 subd. (a).) Likewise, the express factual findings made by the court, including credibility determinations, during proceedings on a petition for habeas corpus or motion to vacate, are binding on the AG, the factfinder, and CalVCB. (Pen. Code, § 1485.5 subd. (c).) The district attorney is required to provide notice to the AG prior to entering into a stipulation of facts that will be the basis for the granting of a writ of habeas corpus or motion to vacate. (Pen. Code, § 1485.5 subd. (b).) If the court grants the writ of habeas corpus or motion to vacate and found that the person is factually innocent, CalVCB is required to, within 30 days, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).)

This bill would provide that the district attorney shall provide notice to the AG no fewer than seven days before entering into a stipulation of facts that will be the basis for granting the

writ of habeas corpus or motion to vacate and provides that a response from the AG is not required to proceed with the stipulation. This bill would make technical and conforming changes that remove the requirement that a recommendation be made to the Legislature, and instead provide that CalVCB shall approve payment if sufficient funds are available, upon appropriation by the Legislature.

6) **Declarations and Findings of Factual Innocence**: A person can petition for a declaration of factual innocence from the court if the person is arrested but no conviction occurred. (Pen. Code, §§ 851.8, 851.86, 851.865.) In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. (Pen. Code, § 851.8, subd. (b).) If a person has secured a declaration of factual innocence from the court, the finding is sufficient grounds for payment of the wrongful conviction compensation claim. (Pen. Code, §§ 851.865.) CalVCB is required to, within 30 days, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, §§ 851.865 & 4902, subd. (a).)

   A person can also seek a finding of factual innocence from the court if the court has granted a writ of habeas corpus or a motion to vacate. (Pen. Code, § 1485.55, subds. (b), (c) & (e).) If a court makes a finding that the person has proven their factual innocence by a preponderance of the evidence, CalVCB is required to, within 30 days, and without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, §§ 1485.55, subds. (c) & (e) & 4902, subd. (a).)

   This bill makes technical and conforming changes that remove the requirement that a recommendation be made to the Legislature for both findings of factual innocence (Pen. Code, §§ 1485.55, subds. (c) & (e)) and declarations of factual innocence (Pen. Code, § 851.865), and instead provide that CalVCB shall approve payment if sufficient funds are available, upon appropriation by the Legislature. This bill would also increase the deadline for CalVCB to approve payment of the claim from 30 days to 90 days within the filing of the claim.

7) **Argument in Support**: According to the *National Association of Social Workers – California Chapter* (NASW-CA), "[t]his bill allows people who were wrongfully convicted to receive compensation from the court in the same way factually innocent people are able to receive compensation through the Victim's Compensation Board.

   "This bill is a follow up measure to SB 446 which shifted the proof of innocence from the wrongfully convicted to the Attorney General in claims before the Victim's Compensation Board. SB 78 corrects an inequity in law when a wrongfully convicted person wants to pursue their claim in court. Parallel to the process set up in SB 446, this bill puts the burden of proof on the District Attorney. [...]

   "The bill also includes other provisions related to this issue and amends existing laws."

8) **Related Legislation:**

a) AB 997 (Gipson) would require CalVCB to reimburse an exonerated person for mental health services related to their incarceration. AB 997 is pending in Senate Public Safety Committee.

b) SB 530 (Bradford) would, among other things, extend the deadline from 30 days to 90 days from the filing of a claim for CalVCB to calculate the compensation and approve payment. SB 530 was held under submission in Senate Appropriations Committee.

9) **Prior Legislation:**

a) AB 160 (Committee on Budget), Chapter 771, Statutes of 2022, among other things, made numerous changes to the wrongful conviction compensation claims process within CalVCB.

b) SB 993 (Skinner), of the 2021-2022 Legislative Session, would have, among other things, made numerous changes to the wrongful conviction compensation claims process within CalVCB. SB 993 died on the Assembly inactive file.

c) SB 446 (Glazer), Chapter 449, Statutes of 2021, shifted the burden onto the state to prove, for the purposes of a wrongful compensation claim with CalVCB, that the claimant is not entitled to compensation.

d) SB 981 (Glazer), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 981 was vetoed.

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

f) SB 269 (Bradford), Chapter 473, Statutes of 2019, extended the statute of limitations for when a wrongfully convicted individual can file a claim with CalVCB from two years to ten years after exoneration or release.

g) SB 321 (Monning), of the 2017–2018 Legislative Session, would have required the Governor to appoint a special master to oversee all claims for compensation presented to CalVCB in wrongful conviction cases. SB 321 was held in the Senate Appropriations Committee.

h) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined and provided clarity to the process for compensating exonerated persons.

i) AB 316 (Solorio), Chapter 432, Statutes of 2009, among other things, extended the timeline for filing claims with CalVCB from six months to two years and allowed a finding of factual innocence to be used as proof in a claim before CalVCB.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent
California Public Defenders Association
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Legal Services for Prisoners With Children
National Association of Social Workers, California Chapter
Prosecutors Alliance California
San Francisco Public Defender
Smart Justice California
University of San Francisco School of Law | Racial Justice Clinic

Opposition

None submitted.

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

Date of Hearing: June 13, 2023
Consultant: Elizabeth Potter

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

SB 86 (Seyarto) – As Introduced January 17, 2023

SUMMARY: Requires the California victim resource center to provide an internet website. Specifically, **this bill**:

1) States that a victim resource center must provide legal and other information to crime victims, their families, and providers of services through an internet website.

2) Requires that the website contain information on the following:

   a) Information about victims' rights, including specified disclosures;

   b) Links to victim resources offered by the state and by each county;

   c) Additional links or resources from public or private entities that the center determines are relevant and appropriate;

   d) A summary of the California criminal justice process;

   e) Information on obtaining restitution from the California Victim Compensation Board; and,

   f) Information on obtaining legal protections for victims and their families.

3) Makes technical, non-substantive changes.

EXISTING LAW:

1) Establishes a resource center which is required to operate a statewide toll-free information service, consisting of legal and other information for crime victims and providers of services to crime victims. (Pen. Code, § 13897.1, subd. (a).)

2) Requires a resource center to provide educational materials discussing a victim's legal rights and distribution of these materials to administrative agencies, law enforcement agencies, victim-service programs, local, regional, and statewide education systems, appropriate human service agencies, and political, social, civic, and religious leaders and organizations. (Pen. Code, § 13897.1, subd. (a).)

3) Requires the Office of Emergency Services (Cal-OES) to grant an award to an appropriate private, nonprofit organization, to provide a statewide resource center. (Pen. Code, §

13897.2, subd. (a).)

4) Tasks the resource centers with the following:

   a) Provide callers with information about victims' legal rights to compensation and, where appropriate, provide victims with guidance in exercising these rights;

   b) Provide callers who provide services to victims of crime with legal information regarding the legal rights of victims of crime;

   c) Advise callers about any potential civil causes of action and, where appropriate, provide callers with references to local legal aid and lawyer referral services;

   d) Advise and assist callers in understanding and implementing their rights to participate in sentencing and parole eligibility hearings as provided by statute;

   e) Refer callers, as appropriate, to local programs, which include victim-witness programs, rape crisis units, domestic violence projects, and child sexual abuse centers;

   f) Refer callers to local resources for information about appropriate public and private benefits and the means of obtaining aid;

   g) Publicize the existence of the toll-free service through the print and electronic media, including public service announcements, brochures, press announcements, various other educational materials, and agreements for the provision of publicity, by private entities.

   h) Compile comprehensive referral lists of local resources that include the following: victims' assistance resources, including legal and medical services, financial assistance, personal counseling and support services, and victims' support groups.

   i) Produce promotional materials for distribution to law enforcement agencies, state and local agencies, print, radio, and television media outlets, and the general public. These materials shall include placards, video and audio training materials, written handbooks, and brochures for public distribution. Distribution of these materials shall be coordinated with the local victims' service programs; and,

   j) Research, compile, and maintain a library of legal information concerning crime victims and their rights. (Pen. Code, § 13897.2, subd. (b).)

5) States that the resource center be located in a manner that has convenient and regular access between the center and those state agencies most concerned with crime victims. (Pen. Code, § 13897.2, subd. (c).)

6) Provides that the entity receiving the grant shall be a private, nonprofit organization, independent of law enforcement agencies, and have qualified staff knowledgeable in the legal rights of crime victims and the programs and services available to victims throughout the state. (Pen. Code, § 13897.2, subd. (c).)

7) Specifies that a subgrantee shall have an existing statewide, toll-free information service and have demonstrated substantial capacity and experience serving crime victims. (Pen. Code, § 13897.2, subd. (c).)

8) States that resource services shall not duplicate victim service activities of the Cal-OES or those of other local programs funded through Cal-OES. (Pen. Code, § 13897.2, subd. (d).)

9) Requires a subgrantee to be compensated at its federally approved indirect cost rate. (Pen. Code § 13897.2 subd. (e).)

10) Provides that all information and records retained by the center in the course of providing services are considered confidential and privileged, as specified. (Pen. Code, §13897.2, subd (f).)

11) States that every victim of crime has the right to receive without cost or charge a list of the rights of victims of crime recognized in the California Constitution. These rights shall be known as "Marsy Rights." (Pen. Code § 679.026 subd. (b).)

12) Requires the Attorney General, by June 1, 2025, to design and make available in PDF or other imaging format a "Victim Protection and Resources" card, as specified. (Pen. Code §679.027 subd. (b)(3).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "While California has some of the broadest crime victims' rights in the United States, without guidance, many victims struggle to understand these rights and the complicated legal process which they often face alone. This bill will ensure that information is easier to access, providing clarity and relief to those dealing with trauma associated with being the victim of a crime."

2) **California Victims Resource Center**: The victims resource center was created in 1984, and put into law by AB 1176 (Calderon), Chapter 1443, Statutes of 1985. According to the California Victims Resource Center, "The California Victims Resource Center is located in Sacramento, California. The Center has operated the State of California's confidential, toll-free 1-800-VICTIMS line since 1984. Students at the McGeorge School of law, under attorney supervision, provide information and referrals statewide to victims, their families, victim service providers, and victim advocates.

   "Callers receive information on such matters as victims' compensation, victims' rights in the Justice System, restitution, civil suits, right to speak at sentencing and parole board hearings, as well as information on specific rights of victims of domestic violence, elder abuse, child abuse, and abuse against disabled.

   "The Center is mandated by legislation, California Penal Code Section 13897, and is funded through the California Governor's Office of Emergency Services (CAL OES)."

The victims resource center currently has a fully functioning website with a variety of resources for victims, families, and providers. The website also includes live chat options as well as an escape option for a user to exit the website discreetly. This bill seeks to update the code section by requiring the website statutorily.

3) **Marsy's Law:** On November 4, 2008, voters approved Proposition 9, which amended the California Constitution to provide a victim's Bill of Rights. This is Marsy's Law. (Cal. Const., art. I § 28.) Under Marsy's Law a victim has a right to: reasonable notice of all public proceedings that the defendant and the prosecutor are entitled to be present at, reasonable notice of all parole and post-conviction release proceedings, and to be present at these proceedings; to be heard, upon request, at any proceeding in which a right of the victim is at issue, including sentencing and post-conviction release decisions; and, to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28, subd. (b)(7)(8) & (15).)

   This bill would require the victims resource center website to provide information about Marsy's law and other resources, protections, and rights available to victims.

4) **Argument in Support**: According to *Los Angeles County District Attorney's Office,* "SB 86 would require the statewide Victim Resource Center to provide an internet website for crime victims and victim service providers. It also requires the internet website to include a summary of victims' rights and resources. This information would include links to victim resources offered by the State and by each county, links or resources from public or private entities that the Center determines are relevant and appropriate, a summary of the California criminal justice process, information on obtaining restitution from the California Victims Compensation Board, and information on obtaining legal protections for victims and their families.

   "Crime victims often must deal with a significant amount of trauma in the aftermath of surviving a crime and navigating the legal system could be challenging. Survivors and their families should be provided with as many resources as possible to help them during that time. This bill will ensure that information is easier to access, providing clarity and some relief to those dealing with trauma associated with being the victim of a crime."

5) **Related Legislation**:

   a) AB 60 (Bryan) creates a statutory right of crime victims to be informed that community-based restorative justice programs are available to them and requires the Department of Justice to update the information on the Victim Protections and Resources card that is provided to crime victims by law enforcement agencies throughout the state. AB 60 is pending hearing in the Senate Committee on Public Safety.

   b) AB 330 (Dixon) requires CalOES to post on the agency's internet website, or on another website established for this purpose that is maintained by the office, information to assist victims of domestic violence with domestic violence law, the dynamics of victimization, and resources available to survivors of domestic violence. AB 330 was held in the Assembly Committee on Appropriations.

6) **Prior Legislation**:

a) AB 1176 (Calderon), Chapter 1443, Statutes of 1985, established the statewide toll-free victim resource center hotline.

b) SB 2428 (Alquist), Chapter 1640, Statutes of 1998, made changes to the victim resource center, including, but not limited to: defining who is a provider of services to crime victims; requiring a 20 percent minimum cash match fund; and requiring information and records retained by the center to be considered confidential and privileged .

REGISTERED SUPPORT / OPPOSITION:

Support
California Catholic Conference
California District Attorneys Association
Crime Victims United
Los Angeles County District Attorney's Office
Riverside County Sheriff's Office

Opposition

None

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

Date of Hearing: June 13, 2023
Counsel: Andrew Ironside

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

SB 250 (Umberg) – As Amended June 5, 2023

As Proposed to be Amended in Committee

SUMMARY: Provides that a person is immune from prosecution for possession of a controlled substance or controlled substance analog for personal use if they deliver the substance to the local public health agency or to local law enforcement. Specifically, **this bill**:

1) Provides that it shall not be a crime for a person to possess for personal use a controlled substance, controlled substance analog, or drug paraphernalia if the person delivers the controlled substance or controlled substance analog to the local public health department or to law enforcement and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances.

2) Provides that the identity of a person who delivers a controlled substance to the local public health department or to law enforcement shall remain confidential.

3) Provides that the person may, but shall not be required to, reveal the identity of the individual from whom the person obtained the controlled substance or controlled substance analog.

4) Defines "seeks medical assistance" or "seek medical assistance," for purposes of the Good Samaritan Law, as any communication made verbally, in writing, or in the form of data from a health-monitoring device, including, but not limited to, smart watches, for the purpose of obtaining medical assistance.

5) Declares that it is necessary to restrict access to public records and maintain confidentiality of people who deliver controlled substances to public health officials or law enforcement in order to encourage people to relinquish controlled substances they suspect have been adulterated.

EXISTING LAW:

1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code, §§ 11054-11058.)

2) Provides that the possession of specified controlled substances is a misdemeanor punishable by up to one year in county jail, except when a person has one or more specified prior

convictions. (Health & Saf. Code, §§ 11350, 11377.)

3) Provides that to be under the influence of specified controlled substances is a misdemeanor punishable by up to one year in county jail and, subject to the court's discretion, a term of probation not to exceed five years. (Health & Saf. Code, § 11550, subd. (a).)

4) Provides that it is not a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. This is known as the Good Samaritan Law. (Health & Saf. Code, § 11376.5, subd. (a).)

5) Provides that it is not a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. (Health & Saf. Code, § 11376.5, subd. (b).)

6) Provides that the provisions pertaining to immunity for seeking medical assistance for some suffering an drug-related overdose do not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will. (Health & Saf. Code, § 11376.5, subd. (c).)

7) Defines "drug-related overdose" as an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. Provides that an individual's condition is deemed to be a "drug-related overdose" if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury. (Health & Saf. Code, § 11376.5, subd. (e).)

8) Provides that, except as specified, the term "controlled substance analog" means either of the following:

   a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or

   b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(1) & (2).)

9) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the

federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

10) Defines "drug paraphernalia" as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of existing law. (Health & Saf. Code, § 11041.5, subd. (a).)

11) Specifies that "drug paraphernalia" does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl. (Health & Saf. Code, § 11041.5, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "The intent of this legislation is to redirect focus away from users or individuals with substance abuse disorders onto sellers and thus create an environment that allows a user to report fentanyl poisonings or opioid-related overdoses to medical or law authorities to better reduce harm. This bill is not intended to increase the incarceration of users. By providing a form of testimonial immunity to users who report fentanyl poisonings to law enforcement, this bill aims to reduce the number of sellers who are distributing opioids containing fentanyl."

2) **Existing Criminal Immunity for Drug-Related Acts:** In 2012, the Legislature enacted AB 472 (Ammiano, Chapter 338, Statutes of 2012) which established immunity from criminal prosecution for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person, in good faith, sought medical assistance for another person experiencing a drug-related overdose that was related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. AB 472 was introduced following an increase in drug overdoses in the state with the intent of encouraging drug overdose victims and witnesses to seek emergency assistance by providing those seeking medical attention with limited immunity for conducted related to drug use (i.e., being under the influence of a controlled substance and possession of a controlled substance, controlled substance analog, or drug paraphernalia).

   This bill would clarify that the immunity would apply when a person seeks medical assistance verbally, in writing, or in the form of data from a health-monitoring device.

3) **New Immunity for Drug-Related Acts:** This bill would provide that it is not a crime for a person to possess a controlled substance for personal use if the person delivers the controlled substance to the local public health department or to law enforcement, and if the person provides the agency with information about the likelihood that the substance has been adulterated with another substance. The goal of this bill is to encourage people to inform a public health official or law enforcement if they suspect drugs in their possession have been

adulterated.

In California, the number of drug overdoses have increased dramatically over the course of the last decade. The primary driver of this increase is the increased prevalence of illicit fentanyl in the drug supply. According to the Centers for Disease Control (CD):

> Fentanyl, a synthetic and short-acting opioid analgesic, is 50-100 times more potent than morphine and approved for managing acute or chronic pain associated with advanced cancer.... [M]ost cases of fentanyl-related morbidity and mortality have been linked to illicitly manufactured fentanyl and fentanyl analogs, collectively referred to as non-pharmaceutical fentanyl (NPF). NPF is sold via illicit drug markets for its heroin-like effect... While NPF-related overdoses can be reversed with naloxone, a higher dose or multiple number of doses per overdose event may be required ...due to the high potency of NPF. (Internal quotation marks and footnotes omitted.)
> (CDhttp://emergency.cdc.gov/han/han00384.asp)

(CDC, *Increases in Fentanyl Drug Confiscations and Fentanyl-related Overdose Fatalities* (Oct. 26, 2015) <https://emergency.cdc.gov/han/han00384.asp> [as of June 7, 2023] [internal citations omitted].)

Illicit fentanyl is typically available as either a liquid or powder. It is often mixed with other drugs like heroin, cocaine, or methamphetatime, and is widely used in counterfeit prescription opioids. Because of mixing, users are often not be aware that that the substance they are consuming have been adulterated with fentanyl. (CDC, Fentanyl Facts <https://www.cdc.gov/stopoverdose/fentanyl/index.html> [as of June 7, 2023].)

One way for people to protect themselves from unknowingly consuming fentanyl is to test their drugs using fentanyl testing strips (FTS). According to the CDC, "FTS are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables)." (CDC, *Fentanyl Test Strips: A Harm Reduction Strategy* <https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html> [as of June 7, 2023]) This bill would provide a person whose drugs test positive for fentanyl with the option to turn them into the local public health department or to law enforcement without fear of prosecution for possession for personal use or possession of drug paraphernalia.

This immunity extends to persons who discover their drugs have been adultered with a substance other than fentanyl, as well as to those who have not tested their drugs for adulterants. FTS cost approximately $1.00 each, and are often available for free or low-cost at syringe services programs (SSPs). (California Department of Public Health, *Fentanyl and Fentanyl Test Strips: Frequently Asked Questions* (FAQs) <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/CDPH Document Library/Fentanyl-test-strips-FAQs-FINAL-10.17.pdf> [as of June 7, 2023].) Nevertheless, a person who suspects their drugs may be tainted may not know where to get FTS, have the money to buy them, or have access to a SSP. Even without using an FTS, a person may have reason to believe that their drugs have been adulterated, such as learning that a friend overdosed on the same supply or receiving a warning to consume a smaller dose of the drug. They may just decide that using the drug is not worth the risk. Moreover, as a result of prohibition, new and more

potent synthetic substances are likely to infiltrate the illicit drug market, substances for which FTS and other drug testing kits are not designed. With these realities in mind, this bill would extend immunity for personal possession to include any person who delivers their drugs to a local public health agency or law enforcement, regardless of whether they have tested those drugs before relinquishing them.

Finally, this bill would also provide that the person may reveal the identity of the individual from whom they obtained the drug, but they need not make such disclosure to enjoy immunity created by this bill.

4) **Argument in Support**: According to the *Attorney General*, "While California's Good Samaritan Law does protect those who call 911 during an overdose from prosecution, it does not include similar provisions for people who use medical devices like FTS to test their drugs, find them to be contaminated, and choose to report their product to law enforcement. SB 250 would extend immunity not only for individuals reporting opioid-related overdoses in cases of medical assistance, but also for individuals reporting substances that test positive for fentanyl to law enforcement. Providing this immunity will encourage reporting to law enforcement, which will assist law enforcement efforts in tracking down dealers and getting fentanyl off the streets.

"In California, there were 7,175 deaths related to an opioid overdose in 2021, and 5,961 of those deaths were specifically attributed to Fentanyl. This opioid crisis is a multifaceted public health and safety issue — and addressing this crisis requires a thoughtful and strategic approach. The California Department of Justice (DOJ) works with local and federal law enforcement partners through the Fentanyl Enforcement Program to detect, deter, disrupt, and dismantle criminal fentanyl operations. DOJ's ongoing work to address the fentanyl crisis includes the seizure of over four million fentanyl pills and almost 900 pounds of fentanyl powder, and over 200 arrests through the DOJ's Bureau of Investigation and work with allied task forces throughout California since April 2021.

"Opioid addiction, abuse, and overdose deaths have torn families apart, damaged relationships, and eroded the social fabric of communities. SB 250 is an important part of a legislative approach needed to address this ongoing crisis." (citations omitted)

5) **Related Legislation**:

   a) AB 915 (Arambula), would require the State Department of Public Health to establish a certification training program for public high school pupil to learn how to identify and respond to an opioid overdose. AB 915 is pending referral in the Senate.

   b) SB 10 (Cortese), would add to the list of requirements for a comprehensive school safety plan a protocol in the event a pupil is suffering or is reasonably believed to be suffering from an opioid overdose. SB 10 is pending referral in the Assembly.

6) **Prior Legislation**:

   a) AB 1598 (Davies), Chapter 201, Statutes of 2022, excludes from the definition of "drug paraphernalia" any testing equipment that is designed, marketed, used, or intended to be

used, to analyze for the presence of fentanyl or any analog of fentanyl.

b) AB 472 (Ammiano), Chapter 338, Statutes of 2012, provided that it shall not be a crime to be under the influence of, or in possession of, a controlled substance or drug paraphernalia if that individual seeks medical assistance for himself, herself, or another person for a drug-related overdose.

c) AB 2460 (Ammiano), of the 2009-2010 Legislative Session, would have provided limited criminal immunity to people experiencing a drug related overdose who contact emergency services. The Governor vetoed AB 2460.

d) AB 1999 (Portantino), Chapter 245, Statutes of 2010, granted immunity to a person under the age of 21 years to knowingly possess or consume alcoholic beverages under specific circumstances relating to the reporting of medical emergencies arising from alcohol consumption.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta
California Youth Empowerment Network
Govern for California
Mental Health America of California

Opposition

None submitted.

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

Amended Mock-up for 2023-2024 SB-250 (Umberg (S))

Mock-up based on Version Number 96 - Amended Assembly 6/5/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Section 11376.5 of the Health and Safety Code is amended to read:

11376.5. (a) (1) Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(2) Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

(b) This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person's will.

(c) Nothing in this section shall affect liability for any offense that involves activities made dangerous by the consumption of a controlled substance or controlled substance analog, including, but not limited to, violations of Section 23103 of the Vehicle Code as specified in Section 23103.5 of the Vehicle Code, or violations of Section 23152 or 23153 of the Vehicle Code.

(d) For the purposes of this section, the following definitions shall apply:

(1) "Drug-related overdose" means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual's condition shall be deemed to be a "drug-related

overdose" if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury.

(2) "Seeks medical assistance" or "seek medical assistance" includes any communication made verbally, in writing, or in the form of data from a health-monitoring device, including, but not limited to, smart watches, for the purpose of obtaining medical assistance.

SEC. 2. Section 11376.6 is added to the Health and Safety Code, to read:

11376.6. (a) (1) Notwithstanding any other law, it shall not be a crime for a person to possess for personal use a controlled substance, controlled substance analog, or drug paraphernalia if the person delivers the controlled substance or controlled substance analog to the local public health department or law enforcement and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances, if known.

(2) (A) The identity of the person described in paragraph (1) shall remain confidential.

(B) The person described in paragraph (1) may**, but shall not be required to,** reveal the identity of the individual from whom the person obtained the controlled substance or controlled substance analog.

(b) No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 11376.6 of the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to encourage persons to relinquish controlled substances or controlled substance analogs they suspect may have been adulterated to local public health departments or law enforcement, it is necessary for the identity of these persons to remain confidential.

Date of Hearing: June 13, 2023
Counsel: Cheryl Anderson

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

SB 290 (Min) – As Amended March 29, 2023

SUMMARY: Requires law enforcement agencies to provide victims of specified crimes or their representative, upon request and within a specified time frame, 911 recordings, if any, and any photographs noted in an incident report. Specifically, **this bill**:

1) Requires state and local law enforcement agencies to provide, in addition to a requested incident report and without charging a fee, a copy of any accompanying or related photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of 911 recordings, related to the following crimes:

   a) Domestic violence, as defined;

   b) Sexual assault, as defined;

   c) Stalking, as defined;

   d) Human trafficking, as defined; and,

   e) Abuse of an elder or dependent adult, as defined.

2) Provides that a copy of any photographs specified above as well as a copy of 911 recordings shall be made available to a victim or their representative no later than five working days after being requested, unless the state or local law enforcement agency informs the victim or their representative why, for good cause, the items are unavailable, in which case they shall be made available no later than 10 working days after the request is made.

3) Extends the time limit for victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult, and their representatives, to request incident reports from within two years to within five years of the completion of the report. Applies the same time limits to requests for photographs, 911 recordings, and evidence.

EXISTING LAW:

1) Provides courts with the authority to issue several types of protective orders for domestic violence prevention, as specified. (Fam. Code, §§ 6220 et. seq.)

2) Provides courts with the authority to issue temporary restraining orders to prevent civil harassment and elder or dependent adult abuse, as specified. (Code of Civ. Proc., § 527.6; Welf. & Inst. Code, § 15657.03.)

3) Requires law enforcement to complete a domestic violence incident report for each domestic violence-related call, as specified. (Pen. Code, § 13730.)

4) Requires state and local law enforcement agencies to provide, upon request and without charging a fee, one copy of all incident report face sheets, one copy of all incident reports, or both, to a victim or the victim's representative related to the following crimes:

   a) Domestic violence, as defined;

   b) Sexual assault, as defined;

   c) Stalking, as defined;

   d) Human trafficking, as defined; and

   e) Abuse of an elder or dependent adult, as defined. (Fam. Code, § 6228, subd. (a).)

5) Provides that a copy of an incident report face sheet shall be made available during regular business hours to a victim or their representative no later than 48 hours after being requested, unless the state or local law enforcement agency informs the victim or the victim's representative of the reasons why, for good cause, the face sheet is not available, in which case it shall be made available no later than five working days after the request is made. (Fam. Code, § 6228, subd. (b)(1).)

6) Provides that a copy of the incident report shall be made available during regular business hours to a victim or their representative no later than five working days after being requested, unless the state or local law enforcement agency informs the victim or the representative of the reasons why, for good cause, the incident report is not available, in which case it shall be made available no later than 10 working days after the request is made. (Fam. Code, § 6228, subd. (b)(2).)

7) Requires a person requesting copies under the above provisions to present state or local law enforcement with the person's identification, including a current, valid driver's license, a state-issued ID card, or a passport, and establishes additional requirements if the person is the victim's representative. (Fam. Code, § 6228, subd. (c).)

8) Provides that the above provisions apply to requests for domestic violence face sheets or incident reports made within five years from the date of completion of the incident report. (Fam. Code, §6228, subd. (d)(1).)

9) Applies these provisions to requests for sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult face sheets or incident reports made within two years of the date of completion of the incident report. (Fam. Code, § 6228, subd. (d)(2).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Due to overwhelming financial burdens, abuse survivors often do not have the funds to spend on fees for evidence of the crimes they experienced. However, without access to this essential evidence, it is more difficult for abuse survivors to successfully build a case and obtain protection from abuse. Victims face disbelief and denial of their abuse, and any corroborating evidence significantly increases the

likelihood of receiving needed legal protection and trauma care for themselves and their children. Since the Access to Domestic Violence Reports Act was enacted in 1999, digital evidence has become the universal technology for evidence recordkeeping. SB 290 updates this law with 21st Century technology and reduces barriers for abuse victims to hold perpetrators to account, seek judicial relief, and access court order protections to shield them from further abuse."

2) **Background:** California has established various legal avenues to help protect victims of domestic violence and other similar crimes from further abuse. For example, under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.), a court may issue a protective order to restrain any person for the purpose of preventing a recurrence of domestic violence, abuse, or sexual abuse and ensuring a period of separation of the persons involved (Fam. Code, §§ 6220, 6300). To obtain this legal protection, a court requires evidence of past abuse. (See Fam. Code, § 6300, subd. (a).) Police reports may be evidence for a court to consider when determining whether to issue a protective order for the victim.

   AB 403 (Romero), Chapter 1022, Statutes of 1999, created the Access to Domestic Violence Reports Act of 1999. It required that domestic violence victims be provided with an expedited and affordable method for obtaining these reports. Under that legislation, a victim of domestic violence or their representative, must be provided, within 48 hours of request, a copy of the police report at no cost. In 2016, the Legislature broadened this requirement to include victims of sexual assault, stalking, human trafficking, elder or dependent adult abuse, or their representative. (AB 1678 (Santiago), Ch. 875, Stats. of 2016.)

   This bill would expand the types of records these victims may obtain. Existing law requires that law enforcement agencies provide victims of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult with a copy of the relevant police report free of charge, and within five days of the request, unless good cause exists for a five day delay. This bill would broaden this provision to include photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of the 911 recordings. Also, whereas existing law only permits requests for reports for sexual assault, stalking, human trafficking, and elder or dependent adult abuse incidents dating back two years from the report, this bill would extend that timeframe to five years, making it consistent with the timeframe for victims of domestic violence.

3) **Argument in Support**: According to the *California Lawyers Association, Family Law Section Executive Committee (FLEXCOM)*, "SB 290 extends existing law to require state and local law enforcement agencies to provide a victim of domestic violence and other specified crimes, or the victim's representative, upon request and without charging a fee, a copy of any accompanying or related photographs of a victim's injuries, property damage, or any other photographs that are noted in the incident report, and a copy of 911 recordings, if any.

   "FLEXCOM recognizes the importance of having easily accessible evidence for victims of abuse, most of whom are self-represented. FLEXCOM values the effort to expand the evidence available to victims from law enforcement without a subpoena. Adding the additional types of evidence available to victims will allow for victims and their representatives to more successfully build a case and obtain protection from abuse."

4) **Argument in Opposition**: None on file

5) **Prior Legislation**:

a) AB 1678 (Santiago), Chapter 875, Statutes of 2016, allowed a victim sexual assault, stalking, human trafficking, elder or dependent adult abuse, or their representative to receive a timely copy of their law enforcement incident report, free of charge.

b) AB 1738 (Tran), Chapter 363, Statutes of 2010, expanded the law providing domestic violence victims with a free copy of the domestic violence incident report to include family members and additional representatives, as specified.

c) SB 1265 (Alpert), Chapter 377, Statutes of 2002, expanded the law authorizing victim access to domestic violence incident reports to include victim representatives where the victim is deceased, as specified.

d) AB 403 (Romero), Chapter 1022, Statutes of 1999, created the Access to Domestic Violence Reports Act (DVRA), entitling victims to incident reports free of charge.

REGISTERED SUPPORT / OPPOSITION:

Support

Calegislation
California Lawyers Association - Family Law Section
California Partnership to End Domestic Violence
Family Violence Appellate Project
Family Violence Law Center
Junior Leagues of California State Public Affairs Committee (CALSPAC)
Peace Officers Research Association of California (PORAC)
The People Concern
University of California, Irvine School of Law Domestic Violence Clinic

Opposition

None

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

Date of Hearing: June 13, 2023
Counsel: Cheryl Anderson

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

SB 359 (Umberg) – As Amended March 13, 2023

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to compile data regarding the relationship between the awarding of credits and the recidivism rates of inmates and to submit an annual report to the Legislature on or before January 1, 2025. Specifically, **this bill**:

1) States the intent of the legislature to require CDCR to compile and analyze data and report that data to the Legislature for the purpose of understanding how credits awarded to inmates during incarceration for participation and achievement in activities and programs, including, but not limited to, firefighting, library services, and postsecondary education relate to postrelease recidivism.

2) Requires CDCR to, on or before January 1, 2025, and annually thereafter, compile data related to credits awarded to inmates and the relationship between the award of each category of credits and the recidivism rates of inmates who received those credits, and to prepare a report on its findings to the Assembly and Senate Committees on Public Safety.

EXISTING LAW:

1) Provides that an incarcerated person, unless otherwise precluded, is eligible to receive good conduct, rehabilitation, and/or education credits to advance their release date if sentenced to a determinate term or to advance their initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (Pen. Code, §§ 2931, 2933 & 2933.05; see also 15 CCR § 3043.4 et seq.)

2) Enacts provisions to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order. (Cal. Const. art. I, § 32, subd. (a).)

3) Provides that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for their primary offense. (Cal. Const. art. I, § 32, subd. (a)(1).)

4) Defines "full term for the primary offense" as the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence. (Cal. Const. art. I, § 32, subd. (a)(1)(A).)

5) Authorizes the CDCR to award credits earned for good behavior and approved rehabilitative or education achievements. (Cal. Const. art. I, § 32, subd. (a)(2).)

6) States that CDCR shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety. (Cal. Const. art. I, § 32. subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 359 would require the Department of Corrections and Rehabilitation to study the best early release credits to determine their relative effectiveness for reducing recidivism.

"In 2016, Proposition 57 authorized the Department of Corrections and Rehabilitation to award credits to prisoners earned for good behavior and approved rehabilitative or educational achievements. Credits can be awarded for various reasons. They range from completing post-secondary and trade courses, to participating in drug and counseling programs. Credits can also be awarded for generalized good behavior.

"There is some confusion surrounding how credits are awarded and how to quantify the benefits they provide. One of the best ways to determine the merit of credits awarded is how they affect the rates of recidivism. Programs offered to those incarcerated vary depending on where an individual has been assigned to serve their sentence. Some facilities offer classes in underwater welding, while others may acquire greater access to educational recourses. All of these programs can be exceedingly beneficial for rehabilitation but can leave policymakers and CDCR in the dark regarding which programs contribute to the lowest rates of recidivism. Studying which credits correlate to the highest and lowest rates of recidivism would provide valuable insight for those seeking out these programs and the policymakers who fund them. California should continue to support and expand the most effective programs in the rehabilitation process.

"SB 359 will help ensure that we support the most valuable rehabilitative programs in our correctional system by studying and determining which early release credits contribute to the lowest rates of recidivism."

2) **Proposition 57 Credit Earning and Rehabilitation:** On November 8, 2016, Californians voted on whether to increase rehabilitation services and decrease the state's prison population by approving Proposition 57. Known as The Public Safety and Rehabilitation Act of 2016, Proposition 57 authorizes CDCR to award sentence credits for rehabilitation, good behavior, and education. It requires CDCR to pass regulations to that effect. (https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf.) Voters approved Proposition 57 by a margin of nearly 30 points. (https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).)

As required, CDCR has since issued regulations to effectuate the proposition's purpose. (Cal. Const., art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*) Awarding credits is based on several different eligibilities including Good Conduct, Milestone Completion, Rehabilitative Achievement, Educational Merit, and Extraordinary Conduct.

(https://www.cdcr.ca.gov/proposition57/.)

3) **State Auditor's Report**: In 2019, the California State Auditor reported that additional oversight was needed to ensure the effectiveness of rehabilitation programs. A significant concern outlined in the report was how CDCR had neither developed any performance measures for its rehabilitation programs, such as a target reduction in recidivism, nor assessed program cost-effectiveness. (https://www.auditor.ca.gov/pdfs/reports/2018-113.pdf.)

While the CDCR has declined to disclose credit calculations that lead to early inmate release due to inmate privacy, it has released annual recidivism reports for years. These reports stopped in 2016, delayed due to Covid, but thereafter resumed. (https://www.cbsnews.com/sacramento/news/missing-cdcr-prop-57-recidivism-data/.) The CDCR has now released recidivism reports through Fiscal Year 2017-2018. The most recent report includes data on the first cohort of releases who earned credits under Prop 57. It notes the three-year conviction rate for offenders who earned credit was slightly lower than the rate for offenders with no enhanced credit earnings. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2023/04/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2017-18.pdf.)

This bill would, somewhat in line with the State Auditor's recommendations in its 2019 report, require CDCR to provide the legislature with information concerning the relationship between credits awarded through various programs, such as those mentioned above, and recidivism rates in order to inform future program development in state prisons. Specifically, it would require the CDCR to analyze how rehabilitative programs and corresponding credit-earning systems influence recidivism and submit a report to the Legislature by January of 2025.

However, the bill would provide no guidance to CDCR for the data to be collected and analyzed. And, as noted in the State Auditor's report, in order to analyze whether CDCR's rehabilitation programs reduce recidivism, CDCR needs to collect additional data and take steps to ensure it delivers specified programs as intended across all its facilities. The report also recommended that CDCR ensure it has reliable tools for assessing the needs of its incarcerated persons. "Research shows that rehabilitation programs can reduce recidivism by changing inmates' behavior *based on their individual needs and risks*." (https://www.auditor.ca.gov/pdfs/reports/2018-113.pdf [emphasis added].) The bill does not speak to either of these concerns. If programs are not being properly implemented, or individuals are not being assessed and placed in appropriate programs based on their individual needs and risks, how would the efficacy of rehabilitation programs on recidivism be accurately measured under this bill? While CDCR recently informed this committee it has taken actions to ensure its assessment tools and rehabilitative programs are effective and aid in reducing recidivism, this bill would not specify that the required report to the Legislature include analysis of CDCR's progress in this regard and its relationship to program results.

Moreover, this bill would not require the data collected and analysis thereof include the support, either personal or institutional, that incarcerated persons received (or did not receive) upon release and the relationship to recidivism. It would not require the data and analysis to include how racial inequality can impact program course outcomes.

AB1688 (Calderon), of the 2019-2020 Legislative Session, would have required the CDCR to contract with a researcher to conduct a recidivism analysis of the effectiveness of rehabilitation programs and to submit a report to the Legislature. In vetoing the bill, the Governor stated, in part, "Any such review should be evaluated in the larger context of significant changes occurring in the area of corrections." (https://www.gov.ca.gov/wp-content/uploads/2019/10/AB-1688-Veto-Message.pdf.) This bill does not address this concern stated in the Governor's veto message.

Further, despite the inmate privacy concerns noted by CDCR, the bill does not specify that data and the resultant report not reveal inmate-identifying characteristics.

4) **Public Policy Institute of California (PPIC) Analysis of the Efficacy of CDCR Rehabilitation Programs**: PPIC, on the other hand, is currently undertaking a comprehensive analysis of the efficacy of CDCR's rehabilitation programs. PPIC has been awarded a grant to, over the course of several years, "evaluate every education, employment, and rehabilitative program offered by the CDCR with the intent of understanding the efficacy of these programs. This analysis will be the first of its kind to examine all of the programs offered by one state prison system, characterize who interacted with the programming in the context of the released population over a five-year period, and bridge the gap between reentry research and research of prison programming. One key element PPIC intends to explore is how racial inequality can impact program outcomes." (https://20mm.org/2023/04/11/ppic-analyze-cdcr-educational-programs/.)

According to information provided to this committee by PPIC, "In the summer of 2021, the Public Policy Institute of California (PPIC) entered into agreements with the California Department of Corrections and Rehabilitation (CDCR) to share data and conduct research into prison programming. PPIC's multiyear initiative will evaluate all education (i.e., adult basic education through college, special education, and literacy), prison jobs and job training (i.e., career technical education and workforce development), and rehabilitative (e.g., various cognitive behavioral interventions and substance use treatment) programs offered to CDCR prisoners by examining a five-year cohort of nearly 170,000 individuals released from state prison between 2015 and 2019. PPIC is currently working with CDCR to gather data and understand the processes by which people enroll in, proceed through, and finish programs and to assess how program participation impacts in-prison and post-prison outcomes. As the relationship between prison programs and recidivism is of paramount concern, PPIC has also entered into an agreement with the California Department of Justice to share criminal history and reoffending information for the cohort members. Yet prison programs have other objectives related to employment, education, health, and social relationships. Therefore, the relationship between prison programs and recidivism must be understood in the broader context of the lives and multidomain outcomes of the formerly imprisoned. PPIC is currently negotiating a data sharing agreement with the Employment Development Department and plans to pursue data from other state and national sources to inform this understanding."

Is this bill necessary in light of the comprehensive analysis already being undertaken by PPIC which includes the relationship between prison programs and recidivism?

5) **Positive Correlation between Rehabilitation Programs and Reduced Recidivism Rates**: Available research does indicate a positive correlation between rehabilitation programs and reduced recidivism rates. One of the most notable interventions is access to higher education

opportunities in state prisons that equip inmates with the necessary tools to compete in the job market. Since 2014, all state prisons have offered associate degrees. A handful of bachelor's programs are also offered, mostly through Cal State Universities. Recently, UC Irvine developed the Leveraging Inspiring Futures through Educational Degrees (LIFTED) program. It is the first bachelor's degree completion program in the University of California system for persons incarcerated in prison. Piloted at UC Irvine, LIFTED enables incarcerated individuals to apply to transfer in as juniors and earn a bachelor's degree while serving their sentence. Soon, building on recent admission successes and support from the Legislature, the LIFTED program will be replicated at UC Campuses throughout the state. According to Keramet Reiter, a professor of criminology, law and society and director of the program, "We know that people who earn a college degree in prison have a recidivism rates approaching zero…." (https://www.google.com/search?q=leveraging+inspiring+futures+through+educational+degrees&rlz=1C1GCEA_enUS991US991&oq=leveraging+inspiring+futures+through+educational+degrees&aqs=chrome..69i57j33i160i395l2.20016j1j4&sourceid=chrome&ie=UTF-8; https://lifted.uci.edu.)

There are also programs through the California Prison Authority (CALPIA), a self-funded state entity that aims to provide real-world job skills to over 6,500 individuals incarcerated in prison. Those who participate and graduate from the program can also receive sentence reductions. CALPIA recently held a graduation ceremony for inmates at the Avenal State Prison who received job certificates. Avenal has poultry, egg production, general fabrication, furniture, laundry and healthcare facility maintenance. Avenal also has administrative, warehouse and maintenance and repairs support functions. By allowing inmates to learn new trades and skill sets, they will also be able to better compete in the job market, similar to those in educational credit programs. "CALPIA proudly reported that individuals who participate in their programs have lower rates of recidivism, compared to those who were qualified to, but did not participate." (https://hanfordsentinel.com/news/local/inmates-at-avenal-state-prison-celebrate-job-certifications-with-calpia-program/article_49742698-c828-539e-8c35-edc45f608f23.html.)

CALPIA also operates a dive school for inmates at the California Institute for Men in Chino. It is a six to 18 month program offering classes of roughly 15 inmates multiple certifications in commercial diving. The school has proven to reduce recidivism rates below 6%, indicating that rehabilitative programs have a positive correlation to recidivism reductions. (https://abc7.com/calpia-dive-school-chino-inmate-corrections/12910029/.)

6) **Argument in Support**: According to the *California District Attorneys Association*, "As you know, since the passage of Proposition 57, CDCR has been given unprecedented authority to award various types of conduct credit to nearly all inmates, including murderers, sex offenders and other violent offenders. Many of the new conduct credits were created through a regulatory process and contradict existing statutory authority limiting the awarding of conduct credits to certain classes of inmates, including those convicted of murder and other violent offenses, as well as those sentenced pursuant to the Three Strikes Act.

"Your bill is an important first step in trying to understand the awarding of credits by requiring CDCR to compile and analyze data, as well as report that data to the Legislature for the purpose of understanding how credits awarded to inmates during incarceration for

participation and achievement in activities and programs relate to post-release recidivism."

7) **Argument in Opposition**: None on file

8) **Related Legislation**: AB 15 (Dixon) states that CDCR records pertaining to an inmates release date and what an inmate did to earn release credits are public records subject to disclosure under the California Public Records Act. AB 15 failed passage in this Committee and was granted reconsideration.

9) **Prior Legislation**:

   a) AB 1688 (Calderon), of the 2019-2020 Legislative Session, would have required the CDCR to contract with a researcher to conduct a recidivism analysis of the effectiveness of rehabilitation programs and to submit a report to the Legislature. AB 1688 was vetoed by the Governor.

   b) AB 561 (Burke), of the 2019-2020 Legislative Session, would have required CDCR, by January 1, 2022, to complete a statewide evaluation of rehabilitation programs and to report its findings and plan to improve performance measures to the Legislature by July 1, 2022. AB 561 was not heard in this Committee.

   c) AB 1929 (Lackey), of the 2017-2018 Legislative Session, would have required the Office of the Inspector General (OIG) and CDCR to evaluate adult inmate and parolee rehabilitation programs. AB 1929 was held in the Assembly Appropriations Committee.

   d) AB 900 (Solorio), Chapter 7, Statutes of 2007, created "The Public Safety and Offender Rehabilitation Services Act of 2007," which among other things required CDCR to implement and significantly enhance anti-recidivism programming including substance abuse treatment, mental health care, and academic and vocational education.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Peace Officers Research Association of California (PORAC)

Opposition

None on file

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

Date of Hearing: June 13, 2023
Counsel: Mureed Rasool

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

SB 376 (Rubio) – As Amended June 1, 2023

SUMMARY: Grants victims of human trafficking the right to have a human trafficking advocate and support person at an interview by law enforcement authorities, district attorneys, or the suspect's defense attorney, and be advised of such right. Specifically, **this bill**:

1) States that a human trafficking victim, as defined, has the right to have a human trafficking advocate and a support person of the victim's choosing present at an interview by a law enforcement authority, prosecutor, or a suspect's defense attorney.

2) Authorizes law enforcement or a prosecutor to exclude the support person from the interview if they believe the support person's presence would be detrimental to the interview process.

3) Defines a "human trafficking advocate" as a person employed by a human trafficking victim service organization, who has a specified degree or license, and meets other specified qualifications.

4) Defines a "support person" as a family member or friend of the victim, not including the human trafficking advocate.

5) Requires human trafficking advocates, prior to an interview, to advise the victim of applicable limitations to the confidentiality of their communications.

6) Requires law enforcement authorities or a prosecutor, prior to commencement of the interview, to notify the human trafficking victim, either orally or in writing, that they have the right to the presence of a human trafficking advocate and a support person.

7) Requires law enforcement authorities or a prosecutor to also notify the victim that the right extends to an interview by the suspect's defense attorney or their investigators or agents.

8) Specifies that an initial investigation into a crime by law enforcement does not constitute an "interview" for the purposes of these provisions.

EXISTING LAW:

1) Provides that a victim of sexual assault as the result of specified offenses has the right to have victim advocates and a support person of the victim s choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. (Pen. Code, 679.04, subd. (a).)

2) Specifies that a sexual assault victim retains this right regardless of whether the victim has previously waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys. (Pen. Code, 679.04, subd. (a).)

3) Specifies that the support person for a sexual assault victim may be excluded from an interview by law enforcement or the district attorney if they determine that the presence of the support person would be detrimental to the purpose of the interview. (Pen. Code, 679.04, subd. (a).)

4) Defines "victim advocate" as a sexual assault counselor, as defined, or a victim advocate working in a center, as specified. (Pen. Code, 679.04, subd. (a).)

5) Provides that prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of specified offenses shall be notified in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim s choosing present at the interview or contact, about other rights of the victim pursuant to law, as specified, and that the victim has the right to request to have a person of the same gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. This provision applies to investigators and agents employed or retained by law enforcement or district attorney. (Pen. Code, 679.04, subd. (b)(1).)

6) States that at the time a sexual assault victim is advised of his or her rights, the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney. (Pen. Code, 679.04, subd. (b)(2).)

7) Specifies that the presence of a victim advocate shall not defeat any existing right otherwise guaranteed by law. A victim's waiver of the right to a victim advocate is inadmissible in court, unless a court determines the waiver is at issue in the pending litigation. (Pen. Code, 679.04, subd. (b)(3).)

8) Specifies that the victim has the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. (Pen. Code, 679.04, subd. (b)(4).)

9) States that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section. (Pen. Code, 679.04, subd. (c).)

10) Grants a victim of domestic violence or abuse, as defined, the right to have a domestic violence advocate and a support person of the victim's choosing present at any interview by law enforcement authorities, prosecutors, or defense attorneys. (Pen. Code, 679.05, subd. (a).)

11) Specifies that the support person may be excluded from an interview by law enforcement or the prosecutor if the law enforcement authority or the prosecutor determines that the presence of that individual would be detrimental to the purpose of the interview. (Pen. Code, 679.05, subd. (a).)

12) Defines "domestic violence advocate" to mean either a person employed by a program, as specified, for the purpose of rendering advice or assistance to victims of domestic violence, or a domestic violence counselor, as defined. (Pen. Code, 679.05, subd. (a).)

13) Provides that prior to being present at any interview conducted by law enforcement authorities, prosecutors, or defense attorneys, a domestic violence advocate shall advise the victim of any applicable limitations on the confidentiality of communications between the victim and the domestic violence advocate. (Pen. Code, 679.05, subd. (a).)

14) Provides that prior to the commencement of the initial interview by law enforcement authorities or the prosecutor pertaining to any criminal action arising out of a domestic violence incident, a victim of domestic violence or abuse, as defined, shall be notified orally or in writing by the attending law enforcement authority or prosecutor that the victim has the right to have a domestic violence advocate and a support person of the victim's choosing present at the interview or contact. (Pen. Code, 679.05, subd. (b)(1).)

15) Specifies that at the time the victim is advised of his or her rights, the attending law enforcement authority or prosecutor shall also advise the victim of the right to have a domestic violence advocate and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney. (Pen. Code, 679.05, subd. (b)(2).)

16) State that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section. (Pen. Code, 679.05, subd. (b)(2).

17) Provides that a person who deprives or violates the personal liberty of another to obtain forced labor or services is guilty of human trafficking, and can be imprisoned for 5, 8, or 12 years. (Pen. Code, § 236.1, subd. (a).)

18) States that a person who deprives or violates the personal liberty of another with the intent to pimp, pander, procure, or commit another specified sex crime, is guilty of human trafficking and may be imprisoned for 8, 14, or 20 years. (Pen. Code, § 236.1, subd. (b).)

19) Provides that a person who induces or persuades a minor to engage in a commercial sex act, as specified, is guilty of human trafficking and may be imprisoned for 5, 8, or 12 years, or for 15 years to life if some form of violence, threat, or duress is involved. (Pen. Code, § 236.1, subd. (c).)

20) Defines a human trafficking "victim" as a person who consults a human trafficking caseworker for the purpose of securing assistance concerning a condition related to their experience as a human trafficking victim. (Evid. Code, § 1038.2, subd. (e).)

21) Defines a "human trafficking caseworker" as a person employed by a human trafficking victim service organization, who has a specified degree or license, and meets other specified qualifications. (Evid. Code, § 1038.2, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Survivors of human trafficking are often left in extremely vulnerable positions. Many are arrested for crimes they were forced to commit, and this may cause them to feel fearful of stepping forward with their traumatic experiences. This poses a huge barrier to break the cycle and escape their circumstances, and makes them vulnerable to being trafficked again. Because of these factors, it is crucial for victims to have a right to an advocate that would help navigate them through any interview by law enforcement authorities, prosecutors, or defense attorneys. This bill would additionally require law enforcement to notify or advise a victim of human trafficking of this right. Under current state law, survivors of domestic violence and sexual assault are already granted the right to an advocate, and survivors of human trafficking experience similar obstacles. This critical resource will increase potential survivor cooperation with the investigation and/or prosecution."

2) **Human Trafficking**: According to the Department of Justice (DOJ), human trafficking, also known as modern-day slavery, is a crime involving the coercion or compelling of a person to provide labor or services, or to engage in commercial sex acts. The coercion can be physical or psychological, and may involve the use of violence, threats, lies, or debt bondage. It is among the world's fastest growing criminal enterprises and is estimated to be a $150 billion-a-year worldwide industry. The International Labor Organization estimates that there are approximately 24.9 million human trafficking victims globally at any given time. (DOJ. *What is Human Trafficking?* <https://oag.ca.gov/human-trafficking/what-is#top> [as of Mar. 29, 2023]; DOJ. *Human Trafficking*. <https://oag.ca.gov/human-trafficking> [as of Mar. 29, 2023].)

   The U.S. is widely regarded as a destination country for human trafficking. (DOJ. *What is Human Trafficking?* <https://oag.ca.gov/human-trafficking/what-is#top> [as of Jun. 7, 2023]; DOJ. *Human Trafficking*. <https://oag.ca.gov/human-trafficking> [as of Jun. 7, 2023].) At the federal level, it is estimated that 14,500 to 17,500 victims are trafficked into the U.S. annually. At the state level, California is one of the nation's top destination states for human trafficking. Human trafficking victims do not necessarily fit into any one profile. (*Id.*) Victims of human trafficking include men, women, and children from diverse backgrounds in terms of race, color, national origin, religion, sexual orientation, socioeconomic status, and education level. (*Id.*) Many domestic victims of sex trafficking are runaway or homeless youth with backgrounds of sexual and physical abuse, poverty, or addiction; these vulnerabilities are often exploited by traffickers. (*Id.*)
   The California Trafficking Victims Protection Act, enacted in 2006, established human trafficking for forced labor or services as a felony crime. (See Pen. Code, § 236.1) Since the California Trafficking Victims Protection Act, a number of additional laws have been passed in California related to human trafficking. (Judicial Council of California (JCC), *Human Trafficking in California: Toolkit for Judicial Officers* (2017) <http://www.courts.ca.gov/documents/human-trafficking-toolkit-cfcc.pdf > [as of Jun. 6,

2023] at p. 31.) "Trafficking victims have certain commonalities that make them vulnerable to exploitation, including poverty, history of sexual or physical abuse, a lack of family or family support, young age, and limited education." (*Id.* at 3.) "Traffickers convince victims to distrust outsiders, particularly law enforcement, and victims are kept unaware of their rights." (*Id.* at p. 4.) "Collaborative approaches to treating victims as victims rather than as criminals have been identified as successful practices. Victim-centered approaches to prosecution ensure that victims are treated as victims and not as criminals, and that they have access to adequate services, assistance, and benefits." (*Id.* at p. 5.)

This bill takes a more victim-centered approach during the interview process by allowing the victim to choose whether to have a trained advocate and a support person be present. Supporters of the bill note that interviewing human trafficking victims can be complex and that an interview may be significantly traumatic for a human trafficking victim. As such, supporters say that the presence of trained advocates and support persons can provide emotional backing needed for a victim to share their story. This bill is similar to the rights already provided in law for sexual assault and domestic violence victims.

3) **Argument in Support**: According to the bill's sponsor, the *Coalition to Abolish Slavery & Trafficking*, "Human trafficking affects thousands of individuals of all backgrounds, gender identities, sexual orientations, and ages. This crime involves the use of force, fraud, or coercion, to recruit, harbor, transport, provide, or obtain a person for the purposes of labor or sexual exploitation. Under existing law, the right to an advocate is only granted for survivors of sexual assault under Penal Code Section 264.2 (b) (1), and for survivors of domestic violence under Penal Code Section 679.5. This means that survivors of human trafficking are often navigating the complexities of the criminal legal system without an advocate present - leading to criminalization and re-victimization. Survivors of human trafficking face barriers similar to survivors of domestic violence and sexual assault and may be fearful of reporting due to fear of retaliation, issues with legal status, or forced criminality.

"SB 376 will provide critical access to a confidential advocate that can provide trauma-informed, survivor-centered and culturally responsive support that will increase the likelihood that the human trafficking survivor will access vital services, protections, and legal remedies."

4) **Argument in Opposition**: None received.

5) **Related Legislation**: SB 464 (Wahab), adds a licensed attorney who represents a sexual assault victim to the list of persons the victim may have present during an interview. SB 464 is pending referral in the Assembly Rules Committee.

6) **Prior Legislation**:

   a) AB 3059 (Kalra), of the 2019-2020 Legislative Session, was substantially similar to this bill. AB 3059 was held in the Assembly Public Safety Committee without further action.

   b) SB 1091 (Pavley), Chapter 148, Statutes of 2012, added human trafficking victims to the list of crimes for which a prosecution witness may have two support persons during testimony.

c) SB 1441 (Kuehl), Chapter 159, Statutes of 2004, gave domestic violence victims the right to have an advocate and a support person present during interviews with law enforcement authorities, prosecutors, or defense attorneys.

d) SB 1444 (Solis), Chapter 1075, Statutes of 1996, gave sexual assault victims the right to have an advocate and a support person present during specified interactions with law enforcement authorities or defense attorneys.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery & Trafficking (CAST) (Sponsor)
American Association of University Women (AAUW) San Jose
Atina
Child Abuse Prevention Center
Community Solutions for Children, Families, and Individuals
Crime Survivors Resource Center
Generate Hope
Healthy Alternatives to Violent Environments
Justice Restoration Center
Los Angeles Center for Law and Justice
Prosecutors Alliance California
Santa Barbara County Human Trafficking Task Force
Treasures Ministries

Opposition

None received.

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

Date of Hearing: June 13, 2023
Counsel: Mureed Rasool

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

SB 400 (Wahab) – As Amended June 6, 2023

As Proposed to be Amended in Committee

SUMMARY: Clarifies existing law regarding the authority of law enforcement agencies to release certain peace officer and custodial officer personnel records.

EXISTING LAW:

1) Declares that people have the right of access to information concerning government business, and balances such right with the right to privacy as well as any disclosure statutes governing the official performance of peace officers. (Cal. Const., art. I § 3, subds. (a)(1) & (3).)

2) Establishes the California Public Records Act (CPRA) and requires government agencies to disclose government records to the general public upon request, unless such records are exempted from disclosure, as specified. (Gov. Code, §§ 7920.000 *et seq.*)

3) Provides that public records are open to inspection at all times during office hours and every person has a right to inspect any public record, except those exempted. (Gov. Code, § 7922.525.)

4) States that a public agency may post any public record on its website, and, in response to a CPRA request, may direct the requester to the website where the public record is posted. (Gov. Code, § 7922.545.)

5) Authorizes agencies to adopt requirements for itself allowing for faster, more efficient, or greater access to records than prescribed by the minimum standards of the CPRA. (Gov. Code, § 7922.505.)

6) Provides, that records of investigations conducted by law enforcement are confidential, and outlines specific procedures for the disclosure of certain crime, weapon, and law enforcement records. (Gov. Code, § 7923.600 *et seq.*)

7) Provides that the personnel records of peace officers and custodial officers are confidential and cannot be disclosed except as provided. (Pen. Code, § 832.7, subd. (a).)

8) Defines a "personnel record" as any file for an employee that is maintained by their employer and relates, among other things, to personal data, medical history, and complaints or investigations of complaints lodged against the employee. (Pen. Code, § 832.8, subd. (a).)

9) Requires any agency in the state that employs peace officers to make a record of any misconduct investigation involving a peace officer and to place that record in the officer's

general personnel file or a separate file designated by the agency. (Pen. Code, § 832.12, subd. (a).)

10) Sets forth a series of procedural protections for California peace officers facing punitive action, known as the Peace Officers' Procedural Bill of Rights (POBOR). (Gov. Code, § 3300 *et seq.*)

11) Provides that, notwithstanding the general provision making peace officer and custodial officer personnel records confidential, personnel records relating to certain conduct must be made available pursuant to the CPRA. (Pen. Code, § 832.7, subd. (b)(1).)

12) States that records related to the following circumstances are not confidential and must be made available for public inspection pursuant to the CPRA:

    a) A record relating to the report, investigation, or findings of:

        i) Any incident involving the discharge of a firearm at a person by an officer;

        ii) Any incident involving the use of force by an officer that results in great bodily injury or death;

        iii) A sustained finding involving a complaint alleging excessive force; or,

        iv) A sustained finding that an officer failed to intervene when another officer clearly used excessive force.

    b) A sustained finding that an officer sexually assaulted a member of the public, as defined;

    c) A sustained finding involving dishonesty by an officer that directly relates to the reporting, investigation, or prosecution of a crime;

    d) A sustained finding that an officer engaged in prejudicial or discriminatory conduct, as defined;

    e) A sustained finding that an officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, § 832.7, subd. (b)(1)(A)-(E).)

13) States that records related to the conduct include all investigative reports, photographs, videos, autopsy reports, all material compiled for a district attorney to review when determining whether to file charges, documents setting forth findings, and disciplinary records, among other things. (Pen. Code, § 832.7, subd. (b)(3).)

14) Defines a "sustained finding" as a final determination by an investigating agency, board, commission, or other specified body, following an investigation and opportunity for appeal, that the officer violated the law or departmental policy. (Pen. Code, § 832.8, subd. (b).)

15) Prohibits records of complaints found frivolous or unfounded, as defined, from being released. (Pen. Code, § 832.7, subd. (b)(9).)

16) Provides a procedure for redacting specified information, such as those that are unwarranted invasions of personal privacy that clearly outweigh the strong public interest in misconduct records. (Pen. Code, § 832.7, subd. (b)(6).)

17) Outlines the process and timeline for which an agency can withhold disclosable records when circumstances, such as ongoing investigations, exist. (Pen. Code, § 832.7, subd. (b)(8).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 400 is about building more public trust and transparency, and improving police-community relations and accountability. While there are increased public records disclosures for misconduct upon request, there has been confusion about whether law enforcement agencies can affirmatively disclose those same eligible misconduct records even without a public records request. This bill clarifies that such affirmative disclosure is available to law enforcement agencies under current law. The bill does not expand disclosable misconduct or change the standards of what kinds of information are disclosable upon termination of an officer. The passage of SB 400 will improve police accountability and rebuild trust between law enforcement agencies and the communities they serve."

2) **Overview of California Law Related to Police Personnel Records**: In 1968, the Legislature passed the CPRA, declaring that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state." (Gov. Code, § 7921.000.) The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) According to the California Constitution, statutes, court rules, or other authorities are to be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (Cal. Const. Art. I § 3.) However, even if a record is not expressly exempted, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. Generally, "records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." (Gov. Code, § 7922.000.)

   In the context of peace officer records, the CPRA contains several relevant exemptions to the general policy requiring disclosure, namely 1) records of complaints to, or investigations conducted by, any state or local police agency, 2) personnel records, if disclosure would constitute an unwarranted invasion of personal privacy, and 3) records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including records deemed confidential under state law. (Gov. Code, §§ 7923.600, 7927.700, 7927.705.) In 1974, the California Supreme Court decided *Pitchess v. Superior Court* (hereafter *Pitchess*) (1974) 11 Cal.3d 531, which allowed a criminal defendant to access to certain kinds of information in citizen complaints against law enforcement officers contained in the officers' personnel records.

   In 1978, the Legislature passed SB 1436 (Carpenter) Chapter 630, Statutes of 1978, to limit the discovery of officer misconduct files. (*City of Santa Cruz v. Municipal Court* (1988) 248

Cal.Rptr. 364, 367-68; *Let Sunshine In* at 128.) The relevant Penal Code provisions define peace officer "personnel records" and, prior to 2018, provided that such records are confidential and subject to discovery only pursuant to the procedures set forth in the Evidence Code.

In 2018, the Legislature passed SB 1421 (Skinner, Ch. 988, Stats. of 2018), which represented a paradigm shift in the public's ability to access previously confidential peace officer personnel records. SB 1421 removed *Pitchess* protection from records pertaining to officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty. Then in 2021, the Legislature passed SB 16 (Skinner, Ch. 402, Stats. of 2021), building upon the transparency provisions enacted by SB 1421 by exempting other incidents such as excessive use of force complaints and unlawful arrest. (See Pen. Code, § 832.7.)

As previously mentioned, existing law generally makes officer personnel records confidential, unless it relates to officer involved shootings, excessive force claims, use of force by an officer that led to death or great bodily. (Pen. Code, § 832.7.) If an officer record contains material relating to one of the outlined circumstances, then the law requires that an agency make such material available pursuant to the CPRA. (Pen. Code, § 832.7, subd. (b).)

The CPRA states that disclosable public records are to be open for public inspection, and further states that an agency may post any public record on its website and, in response to a CPRA request, direct the member of the public to the location of the website. (Gov. Code, §§ 7922.525 & 7922.545.) Furthermore, the CPRA authorizes agencies to adopt requirements allowing for faster, more efficient, or greater access to records than prescribed by the minimum standards of the CPRA. (Gov. Code, § 7922.505.)

Some agencies, like the L.A. County Sheriff's Department, will proactively publish certain officer records without having received a CPRA request. In fact, L.A. County requires their Sheriff's Department to release certain officer record information relating to certain incidents. (Los Angeles Ordinance No. 2022-0011added section 2.170.020 to the Los Angeles County Code.) This bill will clarify that agencies are allowed to disclose non-confidential officer personnel records related to an officer's termination without first receiving a CPRA request. This bill, as proposed to be amended in committee, would further clarify the intent that it be declaratory of existing law.

3) **Argument in Support**: According to the *National Police Accountability Project*, "NPAP is a nonprofit organization dedicated to holding law enforcement officers accountable and ending police violence in all of its forms. We have hundreds of members in California who regularly represent clients that have been harmed by officers who have extensive and documented histories of abusive conduct. Many of these officers were able to evade detection because their disciplinary history was deemed "confidential" under state public records laws and consequently exempt from public disclosure. While public access to misconduct records has significantly improved in recent years thanks to legislation passed by this body, there is still some confusion over whether the public can know whether an officer was terminated for misconduct.

"SB 400 remedies this issue by providing clarity and affirming the public can access whether an officer was terminated for cause. This information will allow both communities and future

potential employers to know whether an officer's conduct was sufficiently egregious to warrant the severe employment consequence of termination."

4) **Argument in Opposition**: According to the *California Statewide Law Enforcement Association*, "The Association was actively involved in the crafting of law and policy related to the public release of information related to misconduct by peace officers. Senate Bills 1421 (Skinner) and Senate Bill 16 (Skinner) set into place a process for sharing documents and information related to the investigation of sustained misconduct by peace officers. The measures also provided categories of serious misconduct that included use of force that is unreasonable or excessive, any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force, sustained findings of unlawful arrests and unlawful searches, prejudice or discrimination on the basis of specified protected classes, discharge of a firearm, and sexual assault. The measure also mandated that any investigation that is initiated by an agency must be completed, even if the officer resigns during the investigation.

"One of the key thresholds that is contained throughout the processes established in SB 1421 and SB 16 is the requirement that the investigation into the alleged misconduct has concluded, the complaint or accusation was sustained, and the officer has exhausted all available avenues of appeal. Otherwise, information regarding the investigation would be premature to release, would violate an officer's due process, and could taint the fairness of the investigation. Once the information is released to the community or news outlets, it is impossible to unwind the public opinion of the alleged event and the damage to that person's reputation is done. For peace officers, this can effectively end your career for an accusation that you have yet to be found guilty of.

"Further, the Legislature and Governor have also recently approved Senate Bill 2 (Bradford) which puts into place a State oversight process for local investigations of misconduct and disciplinary processes. All categorical incidents of serious misconduct are flagged for notification to the Decertification Board at POST for further review to ensure the local process was complete and appropriate.

"SB 400 clearly circumvents the fair and just process crafted by SB 1421 and SB 16 and allows employing agencies to release critical information prior to any findings in the investigation. Once, and if, an officer is found to have committed misconduct, the records would be immediately available pursuant to a CPRA request."

5) **Prior Legislation**:

a) SB 16 (Skinner) Chapter 402, Statutes of 2021, authorized further disclosures of certain officer records related to incidents such as excessive use of force complaints and unlawful arrest.

b) SB 1421 (Skinner) Chapter 988, Statutes of 2018, authorized disclosure of certain officer records related to specified incidents such as officer-involved shootings, uses of force resulting in death or great bodily injury, and sustained findings of sexual assault or dishonesty.

c) SB 1436 (Carpenter) Chapter 630, Statutes of 1978, in part, strengthened officer personnel record confidentiality, and created a statutory process through which such records could be examined.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Faculty Association
California Public Defenders Association
California Public Defenders Association (CPDA)
Council on American Islamic Relations
National Association of Social Workers, California Chapter
National Police Accountability Project (UNREG)
Oakland Privacy
Prosecutors Alliance California
San Francisco Public Defender
Smart Justice California

Opposition

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs (ALADS)
Association of Orange County Deputy Sheriffs
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California Fraternal Order of Police
California Statewide Law Enforcement Association
California Statewide Law Enforcement Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association

San Bernardino County Sheriff's Employees' Benefit Association
Santa Ana Police Officers Association
Upland Police Officers Association

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

Amended Mock-up for 2023-2024 SB-400 (Wahab (S))

Mock-up based on Version Number 97 - Amended Assembly 6/6/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) (1) Notwithstanding subdivision (a), Section 7923.600 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022, shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before

the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

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

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

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

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

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

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

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

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

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

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 7923.000 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180

days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

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

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

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

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

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

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(13) Notwithstanding subdivision (a) or any other law, an agency that formerly employed a peace officer or custodial officer ~~is not prohibited from disclosing~~ **may, without receiving a request for disclosure, disclose** to the public the termination for cause of that officer by that agency for any disclosable incident**, including those** described in subparagraphs (A) ~~to~~ **through** (E), ~~inclusive,~~ of paragraph (1). Any such disclosure shall be at the discretion of the agency and shall ~~be limited to the name and rank of the officer, the date of termination, and a general description of the cause for termination.~~ **not include information otherwise prohibited from disclosure. This paragraph is declaratory of existing law.**

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints

(sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

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

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

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

Date of Hearing: June 13, 2023
Counsel: Liah Burnley

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

SB 412 (Archuleta) – As Introduced February 9, 2023

SUMMARY: Prohibits the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) from requiring a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons to give more than 15 days' notice of their intention to attend a parole hearing.

EXISTING LAW:

1) States that in order to preserve a victims' right to due process and justice, the victim is, among other things, entitled to:

   a) Reasonable notice of all public proceedings that the defendant and the prosecutor are entitled to be present;

   b) Reasonable notice of all of and of all parole or other post-conviction release proceedings, as well as to be present at these proceedings;

   c) The right to be heard, upon request, at any proceeding, including sentencing, a post-conviction release decision, or any proceeding in which a right of the victim is at issue; and,

   d) The right to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28(b)(7)-(8) & (15).)

2) Provides that the victim, next of kin, members of the victim's family and two designated representatives have the right to appear, personally or by counsel, at the parole hearing and to adequately and reasonably express their views concerning the inmate and the case. (Pen. Code, § 3043, subd. (b).)

3) States that the victim or victim's next of kin is entitled to be notified, upon request, of any parole eligibility hearing and of the right to appear, either personally or by other means, to reasonably express their views, and to have their statements considered. (Pen. Code, § 679.02, subd. (a)(5).)

4) Provides that upon request to CDCR and verification of the identity of the requester, BPH must send the victim, or the victim's next of kin, notice of any parole hearing at least 90 days before the hearing. (Pen. Code, § 3043, subd. (a)(1).)

5) States that no later than 30 days before the hearing, any person, other than the victim, entitled to attend the parole hearing must inform BPH of their intention to attend. (Pen. Code, § 3043, subd. (a)(2).)

6) States that no later than 15 days before the hearing, BPH must notify every person entitled to attend the parole hearing confirming the date, time, and place of the hearing. (Pen. Code, § 3043, subd. (a)(3).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Current regulations require 'direct' victims like an assault or rape victim to provide 15 days' notice of their intent to attend a parole hearing but require 'indirect' victims like the family members of someone murdered to provide at least 30 days' notice. This unjustified discrepancy creates confusion about notification timelines and results in family members being unable to participate at hearings. This bill would simply require all victims, direct or indirect, to provide only 15 days of notice.

   "The two-tiered system makes many harmed people feel like second class victims. The parents of a murdered child are not considered actual victims in the BPH regulations even though they are considered a victim pursuant to Marsy's Law and the California Constitution.

   "These people were victimized initially by the crime, then victimized again by being excluded from the parole hearing. Notification requirements are extremely strict. Missing the deadline by even a day means a victim will likely be unable to attend the hearing. This is not right or fair for families that have lost their loved ones. California must not punish these families by letting confusion in the law cause them to miss a hearing."

2) **Marsy's Law:** On November 4, 2008, voters approved Proposition 9, which amended the California Constitution to provide a victim's Bill of Rights. This is Marsy's Law. (Cal. Const., art. I § 28.) Under Marsy's Law a victim has a right to: reasonable notice of all public proceedings that the defendant and the prosecutor are entitled to be present at, reasonable notice of all parole and post-conviction release proceedings, and to be present at these proceedings; to be heard, upon request, at any proceeding in which a right of the victim is at issue, including sentencing and post-conviction release decisions; and, to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28, subd. (b)(7)(8) & (15).)

3) **Parole Hearings**: Penal Code section 3043, subdivision (a)(2), requires any person, other than the victim, who is entitled to attend a parole hearing and intends to do so, to provide at least 30 days' notice to BPH of their intent to attend the hearing. Under CDCR regulations, victims must provide at least 15 days' notice and their next of kin, family members, representative, counsel, and support person must provide at least 30 days' notice of their intention to attend parole hearings, regardless of whether they will participate in person or remotely. (15 CCR § 2057(b)(1)-(3) & (c)(1)-(3).) This bill would limit the amount of notice that CDCR may require from any of these persons, of their intent to attend a parole hearing,

to no more than 15 days.

4) **Argument in Support**: According to the *California District Attorneys Association* (CDAA), "Despite the clear definition of 'victim' enshrined in the California Constitution, Penal Code section 3043(a)(2) states that anyone other than the victim, must give 30-days' notice of their intent to attend a parole hearing. Similarly, California Code of Regulations, Title 15, section 2057(b)-(c) recently adopted by the Board of Parole Hearings (BPH) bifurcates victims into two classifications; those who are direct victims, who must provide 15-days' notice to the Office of Victim Survivor Rights and Services (OVSRS) to attend a parole hearing, and all others, who must provide 30-days' notice. The two different notice requirements cause confusion between victims and their families, create 'second class victims,' use an unconstitutional definition of 'victim,' and generally exclude victims from parole hearings."

5) **Argument in Opposition**: According to *California Attorneys Criminal Justice* (CACJ), "CACJ opposes this bill because 15 days' notice provides insufficient notice to the prospective parolee and his or her counsel to guarantee a fair hearing.

   "A parole hearing is a significant legal proceeding with profound consequences for the incarcerated person seeking parole. Appointed parole attorneys, whose pay is currently capped at $900 per case, must expend significant time to prepare for such hearings. The 30-day requirement provides reasonable notice to the incarcerated person seeking parole and his or her attorney of the evidence to be presented at a parole hearing. The shorter notice period proposed of fifteen days are unreasonably short and threaten the incarcerated person's right to due process at the hearing.

   "In light of the existing requirement that the Board notify victims 90 days prior to the hearing, the current time period of 30 days for the victim to provide notice that he or she will appear is reasonable and fair to all parties involved. It further lessens the likelihood of a need to postpone the parole hearing."

6) **Related Legislation**:

   a) AB 88 (Sanchez), is substantially similar to this bill. AB 88 is pending in Senate Public Safety Committee.

   b) AB 89 (Sanchez), would require the prosecutor's office to give reasonable notice to BPH and the victim, victim's next of kin, or members of the victim's family if they will not send a representative to a parole hearing. AB 89 is pending in Senate Public Safety Committee

7) **Prior Legislation**:

   a) AB 1846 (Valladares), of the 2021-2022 Legislative Session, would have reimbursed a victim or their family member for the reasonable cost of attorneys' fees up to $900 when the prosecutor will not appear at the parole hearing on their behalf. AB 1846 was held under submission in Assembly Appropriations Committee.

b) AB 1847 (Valladares), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 1847 died on suspense file in Senate Appropriations.

c) AB 2409 (Davies), of the 2021-2022 Legislative Session, would have required the district attorney to inform any victim of their right to request that BPH notify them of an inmate's parole suitability hearing, and would allow the victims to request specified documents related to the inmate's parole suitability and ask clarifying questions at the hearing. AB 2409 was held under submission in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association
San Diego County District Attorney's Office

Opposition

California Attorneys for Criminal Justice

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

Date of Hearing: June 13, 2023
Counsel: Mureed Rasool

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

SB 417 (Blakespear) – As Amended June 6, 2023

SUMMARY: Modifies one of the signs that firearm dealers are required to post on their premises so that it includes a statement regarding the risks of access to a firearm in the home. Specifically, **this bill**:

1) Requires the warning sign to contain a statement regarding how access to a firearm in a home significantly increases the risk of suicide, death, injury during domestic violence disputes, the unintentional death and traumatic injury to individuals in the house, and to provide the Suicide & Crisis Lifeline number.

2) Requires that firearm dealers post the sign in a conspicuous location on the counter of one of their main gun displays or within five feet of the cash register.

3) States that, if it is impossible to post the sign on the counter of a main gun display or within five feet of the cash register, the firearm dealer must otherwise post the sign in a conspicuous location.

4) Prohibits the sign from being posted on the floor or ceiling, and requires that it be on a contrasting background.

5) Specifies that the word "Warning" must be on the sign and must be on a separate line above the other text.

EXISTING LAW:

1) Prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Pen. Code, §§ 26500 *et seq.*)

2) Provides that a firearm dealer may be assessed civil fines or may have their firearms license revoked for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Pen. Code, § 26800.)

3) Provides that the business of a firearms dealer may only be conducted in buildings designated in the license as the firearm dealer's business premises, as specified, and that a dealer must display their license on the premises where it can easily be seen. (Pen. Code, §§ 26805 & 26810.)

4) Requires a dealer to conspicuously post a detailed list of all charges imposed by governmental agencies for processing firearm transfers and all the fees a dealer charges, as

specified. (Pen. Code, § 26875.)

5) Provides that firearm dealers must conspicuously post a sign with letters no less than one inch in height that states:

   a) "FIREARMS MUST BE HANDLED RESPONSIBLY AND SECURELY STORED TO PREVENT ACCESS BY CHILDREN AND OTHER UNAUTHORIZED USERS. CALIFORNIA HAS STRICT LAWS PERTAINING TO FIREARMS, AND YOU MAY BE FINED OR IMPRISONED IF YOU FAIL TO COMPLY WITH THEM. VISIT THE WEBSITE OF THE CALIFORNIA ATTORNEY GENERAL AT HTTPS://OAG.CA.GOV/FIREARMS FOR INFORMATION ON FIREARM LAWS APPLICABLE TO YOU AND HOW YOU CAN COMPLY.";

   b) "IF YOU KEEP A FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE TO KEEP IT FROM TEMPORARILY FUNCTIONING.";

   c) "CHILDREN MAY BE UNABLE TO DISTINGUISH FIREARMS FROM TOYS AND MAY OPERATE FIREARMS, CAUSING SEVERE INJURIES OR DEATH. IF YOU KEEP A FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE TO KEEP IT FROM TEMPORARILY FUNCTIONING.";

   d) "YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A SIGNIFICANT FINE OR IMPRISONMENT, IF YOU KEEP A FIREARM WHERE A MINOR IS LIKELY TO ACCESS IT OR IF A MINOR OBTAINS AND IMPROPERLY USES IT, OR CARRIES IT OFF OF THE PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE.";

   e) "IF YOU NEGLIGENTLY STORE OR LEAVE A FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A SIGNIFICANT FINE, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE.";

   f) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER

EXPOSURE.";

g) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM.";

h) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE FIREARM WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE FIREARM WITHIN ANY 30-DAY PERIOD."; and,

i) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN." (Pen. Code, § 26835, subd. (a).)

6) Requires firearm dealers to post an additional sign provided by a suicide prevention program that contains the following statement: "IF YOU OR SOMEONE YOU KNOW IS CONTEMPLATING SUICIDE, PLEASE CALL THE NATIONAL SUICIDE PREVENTION LIFELINE AT 1-800-273-TALK (8255)." (Pen. Code, § 26835, subd. (b).)

7) Requires all firearm packaging to contain a warning regarding firearm storage, children and firearm access, improper storage penalties, and a statement informing people who are contemplating suicide to call the National Suicide Prevention Lifeline number. (Pen. Code, § 23640.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Despite claims from the gun industry that firearm ownership keeps us safe, the evidence tells a different story. The overwhelming research points to the fact that access to a firearm in the home significantly increases the risk of suicide, death during domestic violence disputes, and the unintentional death of children and household members. This bill updates existing posting requirements and is an important public health measure to educate consumers about the risks of firearm ownership, and the availability of resources to people who are in crisis and may consider harming themselves or others."

2) **Presence of a Firearm in the Home**: It is a popular belief that having a firearm in the home provides a form of security against potential intruders, however, that benefit may be overstated. One study of the National Crime Victimization Survey of 14,000 incidents indicates that firearms are used for self-protection in less than one percent of all crimes that take place in the presence of a victim. (Hemenway et al. *The epidemiology of self-defense guns use: evidence from the National Crime Victimization Surveys 2007-2011*. (Apr. 21,

2015) <https://pubmed.ncbi.nlm.nih.gov/25910555/> [as of Jun. 5, 2023].) In turn, there has been a growing body of research demonstrating that owning a firearm in a home actually increases the chance of a firearm-related injury or death occurring that are not related to self-defense situations. (The Trace. *Will a Gun Keep Your Family Safe? Here's What the Evidence Says*." (hereafter *The Trace Article*) (Apr. 7, 2020.) <https://www.thetrace.org/2020/04/gun-safety-research-coronavirus-gun-sales/#:~:text=How%20does%20gun%20violence%20impact%20communities%3F%201%20Having,home%2C%20too%20%E2%80%94%20and%20more%20homicides%20overall%20> [as of Jun. 5, 2023].)

For example, one study indicated that having a firearm in the home was associated with almost a three times increased risk of homicide by a family member or intimate acquaintance. (Kellermann et al. *Gun Ownership as a Risk Factor for Homicide in the Home*. (Oct. 7, 1993) <https://www.nejm.org/doi/full/10.1056/NEJM199310073291506> [as of Jun. 5, 2023].) Another study found that the presence of a firearm during domestic violence incidents significantly increased the risk of homicide and, aside from endangering the victim, also endangered other family members, bystanders, and even coworkers. (Campbell et al. *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*. (Oct. 10, 2011.) <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.93.7.1089> [as of Jun. 5, 2023]; U.S. Department of Justice (U.S. DOJ) *Firearms and Domestic Violence: The Intersections* (hereafter *Firearms and Domestic Violence*) (Dec. 13, 2016) <https://www.justice.gov/archives/ovw/blog/firearms-and-domestic-violence-intersections> [as of Jun. 5, 2023].)

Specific to California, one study spanning from 2004 to 2016 of approximately 18 million Californians, found that living with a handgun owner was associated with a substantially elevated risk for dying by homicide. (Studdert et al. *Homicide Deaths Among Adult Cohabitants of Handgun Owners in California, 2004 to 2016*. (Apr. 5, 2022) <https://web-s-ebscohost-com.proxy.library.ca.gov/ehost/pdfviewer/pdfviewer?vid=0&sid=7184e0f4-44cc-466b-a421-9cba231ee648%40redis> [as of Jun. 5, 2022] at p. 804.) According to the study's author, one of the novel features of the study was that it compared people residing in the same neighborhood, which helped ensure that local conditions such as crime rates and economic conditions had minimal impact on the outcome. (TIME. *Owning Guns Puts People in Your Home at Greater Risk of Being Killed, New Study Shows*. (Jun. 3, 2022) <https://time.com/6183881/gun-ownership-risks-at-home/> [as of Jun. 5, 2023].)

Existing law requires firearm dealers to numerous signs, including a sign on suicide. This bill would update and modify that sign so that it also informs prospective firearm owners about the risks associated with having a firearm in the home, including an increased risk of suicide, death, injury during domestic violence disputes, and the unintentional death and traumatic injury to individuals in the house. Warning signs in relation to cigarettes have been proven more or less effective ensuring purchasers make an informed decision before making a purchase. (World Health Organization. *Encouraging health warnings on tobacco packaging*. <https://www.who.int/europe/activities/encouraging-health-warnings-on-tobacco-packaging> [as of Jun. 7, 2023].) Presumably, educating prospective firearm purchasers of the potential dangers related to owning a firearm will also help ensure they make an informed decision.

3) **Effects of this bill**: Existing law requires firearm dealers in California to post their suicide prevention notice in a conspicuous location in the premises. (Pen. Code, § 26835, subd. (b).)

This bill, in part, would require firearm dealers to post their warning notice conspicuously within their licensed premise, and further states that the notice must be placed on the counter of one of the main gun displays or within five feet of the cash register. This bill also states that if a firearm dealer cannot place the notice as specified, they must post the notice conspicuously. Finally, this bill would specify that the statement cannot be placed on the floor or ceiling of the premise.

The specificity of these requirements do bring in to question what issue they are seeking to solve. Are firearm dealers not posting signs in a conspicuous enough location? Under current law, a firearm dealer can have their license revoked by failing to do so. (Pen. Code, § 26800.) This matter is not discussed in the support letters for this bill, and this committee could not find readily available information on this issue. Is this an issue that the California Department of Justice (DOJ), who inspects firearms dealers for regulatory compliance, cannot otherwise resolve? Although the location of a warning is important, as mentioned above, without more information provided, is this particular portion of the bill overly prescriptive?

4) **Argument in Support**: According to *Everytown for Gun Safety*, "Despite claims from the gun industry that firearm ownership keeps us safe, the evidence tells a different story. The overwhelming research points to the fact that access to a firearm in the home significantly increases the risk of suicide, death during domestic violence disputes, and the unintentional death of children and household members. It is imperative that consumers are able to make fully informed decisions about a firearm purchase, and the warning sign language required by this bill is based in strong evidence:

   - Access to a gun triples the risk of death by suicide.
   - Access to a gun doubles the risk of death by homicide.
   - Access to, or "the presence of," a gun in a domestic violence situation makes it five times more likely that the woman will be killed.
   - Every year, 350 children under the age of 18 gain access to a firearm and unintentionally shoot themselves or someone else.

   This bill is an important public health measure to educate consumers about the risks of firearm ownership"

5) **Argument in Opposition**: None received.

6) **Prior Legislation**:

   a) AB 1621 (Gipson), Chapter 76, Statutes of 2022, among other things, updated firearm dealer signage requirements.

   b) Proposition 63 of the November 2016 general election, in part, required that every firearm dealer to include on their posted sign a statement informing firearm owners that they must report the theft or loss of their firearm, as specified.

   c) AB 231 (Ting) Chapter 730, Statutes of 2013, among other things, modified the firearm ownership sign that firearm dealers are required to post to include a statement regarding

negligent storage and reporting parameters for lost or stolen firearms.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
Everytown for Gun Safety Action Fund
Fund Her
Women Against Gun Violence

Opposition

None received.

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

Date of Hearing: June 13, 2023
Chief Counsel: Sandy Uribe

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

SB 448 (Becker) – As Amended June 8, 2023

SUMMARY: Prohibits the juvenile court from detaining a minor in custody solely because of the minor's county of residence.

EXISTING LAW:

1) Provides that a peace officer may take a minor into temporary custody when there is reasonable cause to believe that the minor will be adjudged a ward of the court or charged with a criminal action, or that the minor has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, or if the minor is found in any street or public place suffering from any sickness or injury which requires medical treatment, hospitalization, or other remedial care. (Welf. & Inst. Code, § 625.)

2) Provides that an officer who takes a minor into temporary custody may do any of the following:

   a) Release the minor;

   b) Deliver or refer the minor to a public or private agency with which the city or county has an agreement or plan to provide shelter, counseling, or diversion services;

   c) Prepare a written notice to appear before the probation officer of the county in which the minor was taken into custody at a specified time and place; or,

   d) Take the minor without necessary delay before the probation officer of the county in which the minor was taken into custody. (Welf. & Inst. Code, § 626.)

3) Requires that when an officer takes a minor before a probation officer at a juvenile hall or any other place of confinement, they take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody. (Welf. & Inst. Code, § 627.)

4) Requires the probation officer to immediately investigate the circumstances of the minor and the facts surrounding their being taken into custody and immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare based on the existence of one or more of the following conditions:

a) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another;

b) The minor is likely to flee the jurisdiction of the court; or,

c) The minor has violated an order of the juvenile court. (Welf. & Inst. Code, § 628, subd. (a)(1).)

5) Requires the probation officer to release a minor to their parent, guardian, or responsible relative on home supervision unless one of the above conditions exists. (Welf. & Inst. Code, § 628.1.)

6) Requires, except as provided, that a minor taken into custody be brought before a juvenile court judge or referee for a hearing to determine whether the minor must be further detained as soon as possible and no later than the next judicial day after a petition has been filed. This is known as a "detention hearing." (Welf. & Inst. Code, § 632, subd. (a).)

7) Requires, upon the minor's appearance before the court at the detention hearing, the minor and the minor's parent or guardian, if present, to be informed of the reasons why the minor was taken into custody, the nature of the juvenile proceedings, and the right of the minor to be represented by counsel at every stage of the proceedings. (Welf. & Inst. Code, § 633.)

8) Requires that, unless it appears that the minor has violated a juvenile court order, or has escaped from a juvenile court commitment, or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the another person or their property that the minor be detained, or that the minor is likely to flee to avoid the jurisdiction of the court, the court order the minor released from custody. (Welf. & Inst. Code, § 635, subd. (a).)

9) Allows consideration of the circumstances and gravity of the alleged offense, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of another person or their property that the minor be detained. (Welf. & Inst. Code, § 635, subd. (b)(1).)

10) Prohibits the court from basing the decision to detain on the minor's status as a dependent of the court, or on the child welfare services department's inability to provide a placement for the minor. (Welf. & Inst. Code, § 635, subd. (b)(2).)

11) Requires the court to order the release of the minor unless a prima facie showing has been made that the minor will be adjudged a ward of the court or charged with a criminal action. (Welf. & Inst. Code, § 635, subd. (c)(1).)

12) Provides that if it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court, or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in

the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days. Requires the court to enter the order together with its findings of fact in support in the records of the court. (Welf. & Inst. Code, § 636, subd. (a).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Some children involved with the juvenile justice system are separated from their families, their education, and their communities, solely due to their zip code. This injustice happens at an increased level for children in urban counties, as they often fall on county boundaries, and cross county lines for school or work needs.

   "The current juvenile courts system considers several factors in the decision to detain children, including the gravity of the alleged offense and county of residence. When children are detained outside of their county, juvenile courts cannot exercise the same discretion on probation alternatives because these programs are provided by each county.

   "Because of this, children who are arrested and detained out of their county of residence are likely to remain detained for several weeks until their cases have a detention hearing, even if it was a minor offense.

   "SB 448 will restore equity in alternatives to detention for children in the juvenile justice system. The Equity for Youth in Detention Act removes county of residence as a determining factor for youth detention, creates equal treatment of all children, and allows judges to refocus on the purpose of the juvenile justice system: the best interests of the child."

2) **Detention Hearings**: When a minor is taken into custody, the minor must be taken before a juvenile court judge or referee for a hearing to determine whether they should continue to be detained. (Welf. & Inst. Code, § 632, subd. (a).) The detention hearing must take place as soon as possible and no later than the next judicial day after a petition has been filed with the court. (*Ibid.*) At the detention hearing, the court must consider the probation officer's report, and any other evidence. The court may question the minor, the minor's parent or legal guardian, or other person with relevant knowledge pertaining to the minor. (Welf. & Inst. Code, §§ 635, subd. (a).)

   The court is required to order the release of the minor from custody unless the court finds that the prosecutor has made a prima facie case that the minor has committed a crime and that one of the following is true: the minor has violated a juvenile court order, the minor has escaped from the commitment of the juvenile court, that it is a matter of immediate and urgent necessity for the protection of the minor, that it is reasonably necessary for the protection of the person or property of another that the minor be detained, or that the minor is likely to flee to avoid the jurisdiction of the court. (Welf. & Inst. Code, § 635, subds. (a), (c).) The court may consider the circumstances and gravity of the alleged offense, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor be detained. (Welf. & Inst. Code, § 635, subd. (b)(1).) If the minor is a dependent of the court under section 300, the court is prohibited from basing

the decision to detain on the minor's status as a dependent of the court or the child welfare services department's inability to provide a placement for the minor. (Welf. & Inst. Code, § 635, subd. (b)(2).)

If the court finds that the minor has violated a juvenile court order, the minor has escaped from the commitment of the juvenile court, that it is a matter of immediate and urgent necessity for the protection of the minor, that it is reasonably necessary for the protection of the person or property of another that the minor be detained, or that the minor is likely to flee to avoid the jurisdiction of the court, and continuance in the home is contrary to the minor's welfare, the court may order the minor detained in juvenile hall or another suitable placement. (Welf. & Inst. Code, § 636, subd. (a).) If the court finds that 24-hour supervision is not necessary, the minor must be released on home supervision. (Welf. & Inst. Code, §§ 628.1, 636, subd. (b).)

Proponents of this bill argue that youth who are accused of committing crimes outside of their county of residence are regularly being detained solely due to their out-of-county status when they otherwise would not be detained and instead, would be placed on home detention or subject to electronic monitoring. This bill is designed to address that issue by prohibiting the juvenile court's decision to detain the minor from being based solely on the minor's county of residence.

3) **Argument in Support**: According to the *Pacific Juvenile Defender Center*, a co-sponsor of this bill, "Under the current law, a juvenile court shall release a detained youth from custody unless after considering certain factors the court determines that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that the minor remain in custody. Typically, this finding is not applied to out-of-county youths. Out-of-county youths, who are detained, even for minor offenses, are likely to remain in custody until their cases are adjudicated. Simply, the youths remain in custody because their residence is out of the county.

"Out-of-county youths in custody are rarely considered for less restrictive alternatives programs to incarceration, such as electronic monitoring or community release supervision programs. The same youths would have qualified for such alternative release programs had they been residents of the county they are detained in. Instead, out-of-county youths remain in custody until their cases are adjudicated, which in some instances could take weeks. As a result, the youths are unnecessarily separated from their families for extended periods of time, disrupting their schooling, ties to their community, and inflicting unnecessary trauma.

"To illustrate the issue at hand, if a youth who resides on the southern end of Mission Street, located in the City and County of San Francisco, is arrested for a minor offense while playing at Lincoln Park, the neighborhood park that is located in San Mateo County, the youth is unlikely to be released from custody prior to the adjudication of the case simply because the youth is a San Francisco County resident. On the other hand, if this youth was a resident of San Mateo County, the youth would be released on community supervision program or electronic monitoring pending the adjudication of the case. This problem is not limited to these two counties, but it exists throughout the state....

"The intent behind SB 448 is to address this inadequacy by prohibiting juvenile judges from basing their decision to detain youths on the youths' county of residence. The concept in SB

448 is not new. SB 448 is patterned after the existing language in Welfare and Institutions Code section 635, which provides that: 'if a minor is a dependent of the court pursuant to Section 300, the court's decision to detain shall not be based on the minor's status as a dependent of the court or the child welfare services department's inability to provide placement for the minor.'

"Just as the court cannot base their detention decision based on the youth's dependent status or lack of placement, the court shall not base its decision to detain based on the youth's county of residence due to the lack of services or alternative programs to detention."

REGISTERED SUPPORT / OPPOSITION:

Support

Fresh Lifelines for Youth (Co-Sponsor)
Pacific Juvenile Defender Center (Co-Sponsor)
California Attorneys for Criminal Justice
California Public Defenders Association
Children's Defense Fund - CA
Children's Initiative
Communities United for Restorative Youth Justice
Freedom 4 Youth
Fresno Barrios Unidos
Immigrant Legal Resource Center
John Burton Advocates for Youth
Just Detention International
San Francisco Public Defender
Santa Cruz Barrios Unidos
Young Women's Freedom Center
Youth Law Center

Opposition

None submitted

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

Date of Hearing: June 13, 2023
Chief Counsel: Sandy Uribe

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

SB 545 (Rubio) – As Amended May 15, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires consideration of a minor's status as a victim of human trafficking or sexual abuse when determining whether to transfer a case from juvenile court to adult criminal court, or remand back to the juvenile court in cases where the case had previously been transferred to the criminal court. Specifically, **this bill**:

1) Specifies that when determining whether to transfer a matter from the juvenile court to a court of criminal jurisdiction, in evaluating the minor's criminal sophistication, the court should consider whether the minor was involved in the child welfare or foster care system, as well as whether the minor was a victim of human trafficking, sexual abuse, or sexual battery.

2) Specifies that when determining whether to transfer a matter from the juvenile court to a court of criminal jurisdiction, in evaluating the circumstances and gravity of the charged offense, the court must consider evidence offered that indicates the minor committed the alleged offense against the person who trafficked or sexually abused the minor.

3) Prohibits transfer of a juvenile matter to the criminal court if the court finds by clear and convincing evidence that the minor committed the alleged offense against the person who trafficked or sexually abused them.

4) Requires reverse transfer of a case from the criminal court back to the juvenile court for disposition if the court finds by clear and convincing evidence that the minor accused of committing the offense is a victim of human trafficking, sexual abuse, or sexual battery.

EXISTING LAW:

1) Authorizes the prosecutor to make a motion to transfer a minor who is 16 years of age or older from juvenile court to a court of criminal jurisdiction in any case in which the minor is alleged to have committed a felony. (Welf. & Inst. Code, § 707, subd. (a)(1).)

2) Requires the probation officer to submit a report on the behavioral patterns and social history of the minor when a prosecutor makes a motion to transfer a juvenile case to adult criminal court. (Welf. & Inst. Code § 707, subd. (a)(1).)

3) Requires the juvenile court to decide whether the minor should be transferred to adult criminal court following submission and consideration of the report and of any other relevant evidence that the petitioner or the minor may wish to submit. (Welf. & Inst. Code § 707,

subd. (a)(3).)

4) Requires the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to find that the minor should be transferred to adult criminal court. (Welf. & Inst. Code § 707, subd. (a)(3).)

5) Requires the court to consider the following criteria when deciding whether to transfer the case:

   a) The degree of criminal sophistication exhibited by the minor;

   b) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction;

   c) The minor's previous delinquent history;

   d) Success of previous attempts by the juvenile court to rehabilitate the minor; and,

   e) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor. (Welf. & Inst. Code § 707, subd. (a)(3)(A)-(E).)

6) Specifies that with regard to criminal sophistication exhibited by the minor, the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication. (Welf. & Inst. Code § 707, subd. (a)(3)(A)(ii).)

7) Specifies that when evaluating the minor's previous delinquent history, the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior. (Welf. & Inst. Code § 707, subd. (a)(3)(C)(ii).)

8) Provides that in any case in which a minor is transferred from juvenile court to criminal court, upon conviction or entry of a plea, the person may, under specified circumstances, request the criminal court to return the case to the juvenile court for disposition. (Welf. & Inst. Code, § 707.5, subds. (a) & (b).)

9) Establishes an affirmative defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. Excludes application of affirmative defense to a violent felony, as defined. (Pen. Code § 236.23, subd. (a).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "Children who are trafficked or sexually abused and fight back against their abusers deserve our understanding and empathy, not harsh prison sentences. Many of these children come from difficult backgrounds, full of neglect or trauma, which can make them easy targets for adults with sinister intentions. And unfortunately, when some of these children fight back against the adults who abuse them, they find themselves trapped in a new system of trauma because they are often tried as adults in criminal court and sent to prison.

   "SB 545 recognizes that the right thing – the moral thing – is to treat these children as survivors that need healing and services. SB 545 accomplishes this by requiring the juvenile court to keep a child sex crime victim within the juvenile system if it finds by clear and convincing evidence that the person they attacked was their abuser and declaring the intent of the Legislature that these children be provided treatment and services. I have heard firsthand the incredible pain from survivors who have experienced this trauma. It is our duty to promote reintegration by providing them with trauma-informed responses and commonsense judicial practices so that they can be provided with the opportunity to heal and live a full, successful life."

2) **Juvenile Transfer Hearings**: Proposition 57, approved by the voters in the November 2016 election, substantially changed the process by which juvenile offenders may be transferred to the jurisdiction of the criminal court by eliminating the authority of prosecutors to directly file petitions in criminal court, and by requiring that the juvenile court hold a hearing and determine if a transfer is appropriate.

   When a minor has been charged in the juvenile court with any felony allegedly committed when they were 16 years of age or older or has been charged with one of specified serious or violent felonies listed in Welfare and Institutions Code section 707, subdivision (b) committed at the age of 14 or 15, the prosecutor may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction. The prosecution bears the burden of establishing by clear and convincing evidence that the minor is not a suitable candidate for treatment under the juvenile court system.

   Prop. 57 substantially simplified the existing standards for the juvenile court to consider when determining whether a minor's case should be heard in the criminal court. Before enactment, the law required the juvenile court to evaluate whether the minor was "a fit and proper subject to be dealt with under the juvenile court law." (See former Welf. & Inst. Code, § 707.) After Prop. 57 the court must simply consider whether "the minor should be transferred to a court of criminal jurisdiction." Thus, the concept of fitness has been eliminated. Under the prior statutory scheme, some minors were subject to a presumption of unfitness for juvenile court adjudication based on their age and/or prior offense history. Proposition 57 removed all of those presumptions and gives the court one set of criteria to apply in a determination of whether the minor should be transferred to criminal court of criminal jurisdiction, with broad discretion given to the court to evaluate and weigh each factor.

   In ruling on a transfer motion, the court must consider five factors enumerated in Welfare and Institutions Code section 707. These include: the degree of criminal sophistication exhibited by the minor; whether the minor can be rehabilitated prior to the expiration of the

juvenile court's jurisdiction; the minor's previous delinquent history; the success of previous attempts by the juvenile court to rehabilitate the minor; and the circumstances and gravity of the offense alleged in the petition. (Welf. & Inst. Code, § 707, subd. (a)(3)(A)–(E); see also Cal. Rules of Court, rule 5.770(b)(2).) This bill would clarify, and expand on, two of those five criteria, namely the degree of criminal sophistication and the circumstances and gravity of the offense.

With regards to evaluating the minor's degree of criminal sophistication, this bill specifies that the court may consider the minor's involvement in the child-welfare or foster-care system, as well as whether the minor was a victim of human trafficking, sexual abuse, or sexual battery. It should be noted that existing law allows the court "to give weight to any relevant factor" and while some factors are enumerated in the statute, the statute also says that the list is not inclusive. Thus, practically speaking, the juvenile court can already consider the additional circumstances contained in the bill. Should the bill be amended to require the court to consider this evidence, rather than allow consideration?

With regards to the circumstances and gravity of the offense, this bill requires the juvenile court to consider any evidence offered that the person against whom the minor committed the crime has sexually abused, sexually battered, or trafficked the minor. As proposed to be amended in committee, when this evidence rises to the level of clear and convincing evidence, the juvenile court would be prohibited from transferring the case to the criminal court. If the evidence does not meet that standard, it remains a factor for the court's consideration.

3) **Reverse Remand Proceedings**: When a juvenile case is transferred to adult criminal court, there are provisions in law which permit transfer back or "reverse remand" to the juvenile court under certain circumstances. Upon motion by the defense, the criminal court has the authority to return the case to juvenile court for disposition in the following circumstances:

   - If the person is convicted at trial in criminal court solely of one or more misdemeanors, the case must be returned to juvenile court if the defense requests that the case be returned to the juvenile court.

   - If any of the allegations in the juvenile court petition that were the basis for transfer involved a section 707(b) offense, and the person is convicted at trial in criminal court only of non-section 707(b) offenses, or a combination of non-Section 707 (b) felony offenses and misdemeanors, the court has the discretion to return the case to juvenile court upon request.

   - If the allegations in the juvenile court petition that were the basis for transfer involved a non-section 707(b) felony, and pursuant to a plea agreement the persons pleads guilty to one or more misdemeanors, or if any of the allegations in the juvenile court petition that were the basis for transfer involved a section 707(b) felony offense, and pursuant to a plea agreement the person pleads guilty only to one or more misdemeanors, non-section 707(b) felony offenses, or a combination of non-section 707 (b) felony offenses and misdemeanors, the case must be returned to the juvenile court if the defense and prosecution agree that the case should be returned to the juvenile court, the parties request that the case is returned to the juvenile court, and

the court approves the return of the case.

This bill would provide additional grounds to transfer a case back to the juvenile court after it has been transferred to a court of criminal jurisdiction. Specifically, this bill provides that if the juvenile court finds by clear and convincing evidence that the person against whom the minor committed the alleged crime either trafficked that minor or sexually abused them, then the case shall be transferred back to the juvenile court.

4) **Impact of Transfer Orders on Youth**: Youth transferred to adult court may have worse post-release outcomes than youth who receive treatment in the juvenile system, which is inconsistent with the goal of improving public safety. As has been noted by the California Supreme Court, the certification of a juvenile offender to an adult court has been accurately characterized as "the worst punishment the juvenile system is empowered to inflict."(Separating the Criminal from the Delinquent: Due Process in Certification Procedure (1967) 40 So.Cal.L.Rev. 158, 162; *People v. Ramona* (1985) 37 Cal.3d 802, 810.) The Centers for Disease Control has also concluded: "[T]ransfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among youth who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good." (Robert Hahn et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, at p. 9 (Nov. 30, 2007).) Further, there is a disparate impact of transfer orders on youth of color. In California, Black and Latino youth are significantly more likely than white youth to face adult court prosecution. (*Futures Denied: Why California Should Not Prosecute 14- and 15-year-olds as Adults*, Human Rights Watch and Haywood W. Burns Institute, at pp. 14-16 (2018).)

5) **Argument in Support**: According to *Human Rights for Kids*, the sponsor of this bill, "Too often the criminal justice system fails to respond in a trauma-informed and age-appropriate way to children who engage in delinquent or criminal conduct. The vast majority of children involved in the criminal justice system are contending with early childhood trauma and unmitigated Adverse Childhood Experiences (ACEs), including psychological, physical, and/or sexual abuse; witnessing domestic violence; living with family members who are substance abusers, suffer from mental illness or suicidal ideation, or are incarcerated. Studies have shown that approximately 90 percent of children in the juvenile justice system have experienced at least two ACEs, and 27 percent of boys and 45 percent of girls have experienced at least five ACEs.1 However, the justice system rarely recognizes or understands the connection between children who have committed a criminal act and their previous exposure to trauma….

"While psychological research shows that children who have been victimized have real feelings of danger triggered by their abusers, the law does not always recognize this under the theory of self-defense.

"A self-defense claim is usually valid in the law only when the individual feels that "the danger of bodily harm is imminent." For example, to be protected under California Penal Code 197 PC for killing in self-defense, there must be: '1. Reasonable ground to apprehend a design to commit a felony or do great bodily injury, AND 2. Imminent danger of such design

being accomplished.'

"For many child victims of sex abuse or trafficking, they are not always in "imminent danger" under the legal definition when they commit crimes against their abusers. Sometimes these crimes are premeditated on the part of the child victim. Nevertheless, sound public policy should dictate that children who commit crimes against their abusers are provided with treatment and services, not criminal punishment. The child would not have committed a crime if it were not for the abuser having abused or trafficked the child in the first place. Therefore, the law should focus on treatment, not punishment, of the child victim."

6) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "AB 545 is in tension with important protections for youth in California transfer law, specifically the requirement that the prosecution prove by clear and convincing evidence that the youth is not amendable to rehabilitation under the jursidiction of the juvenile court and may be transferred. (Welf. & Insts. Code, § 707(a)(3.) In contrast, AB 545 would shift the burden to the youth to prove that he or she may not be transferred to adult court if he or she was trafficked, sexually abused, or sexually battered by the alleged victim. Accordingly, we are opposed to SB 545 to the extent it would result in shifting the burden of proof to the minor from the prosecution at the transfer hearing.

"Under current California law, the prosecution has the burden of proof on the issue of whether 'the circumstances and gravity of the offense alleged to have been committed by the minor' support transfer to adult court. Under SB 545 that burden would shift to the minor for cases involving human trafficking, which would make it more difficult for such minors to prevail at transfer hearings."

7) **Related Legislation**: AB 1497 (Haney) AB 1497 would have extended the applicability of affirmative defense for a victim of human trafficking to a violent felony. AB 1497 was held in the Assembly Appropriations Committee.

8) **Prior Legislation**:

   a) AB 2361 (M. Bonta), Chapter 330, Statutes of 2022, requires the juvenile court to find by clear and convincing evidence that the minor is not amenable to rehabilitation while under the jurisdiction of the juvenile court in order to transfer the minor to a court of criminal jurisdiction.

   b) AB 624 (Bauer-Kahan), Chapter 195, Statutes of 2021, made an order transferring a minor from a juvenile court to a court of criminal jurisdiction subject to appeal, as specified.

   c) AB 1423 (Wicks), Chapter 583, Statutes of 2019, allows a criminal court to return a case to juvenile court for further proceedings under certain circumstances.

REGISTERED SUPPORT / OPPOSITION:

Support

Human Rights for Kids (Sponsor)
11:11 Media Impact
Alameda County District Attorney's Office
Bridge Network
Building Opportunities for Self-sufficiency
Ceres Policy Research
City of Oakland Mayor Sheng Thao
Communities United for Restorative Youth Justice
Disability Rights California
East Bay Asian Youth Center
Family Assistance Program
Law Enforcement Action Partnership
Loyola Law School, Sunita Jain Anti-trafficking Initiative
National Association of Social Workers, California Chapter
National Juvenile Justice Network
Pacific Juvenile Defender Center
Polaris Project
R Street Institute
Rights4girls
S.h.a.d.e. Movement
Santa Cruz Barrios Unidos
Shared Hope International
Sister-to-sister 2
Smart Justice California
Vision Quilt
World Without Exploitation

Opposition

California Attorneys for Criminal Justice
California District Attorneys Association

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

AMENDMENTS TO SENATE BILL NO. 545
AS AMENDED IN SENATE MAY 15, 2023

Amendment 1
On page 5, in line 38, strike out "batter" and insert:

battered

Amendment 2
On page 5, in line 38, after the period insert:

If the court finds by clear and convincing evidence that the person against whom the minor is accused of committing an offense trafficked, sexually abused, or sexually battered the minor, the case shall not be transferred to a court of criminal jurisdiction.

- 0 -

Date of Hearing: June 13, 2023
Counsel: Liah Burnley

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

SB 602 (Archuleta) – As Amended June 7, 2023

SUMMARY: Extends the operative timeframe for trespass letters of authorization, as specified. Specifically, **this bill**:

1) Extends the operative timeframe for trespass letters of authorization from 30 days to 12 months or a time determined by local ordinance, whichever is shorter, for properties where there is a fire hazard or the owner is absent.

2) Extends the operative timeframe for trespass letters of authorization from 12 months to three years for properties closed to the public and posted as being closed to the public.

3) Requires trespass letters of authorization to be submitted in a notarized writing on a form provided by law enforcement.

4) Allows trespass letters of authorization to be submitted electronically.

EXISTING LAW:

1) Provides that a person is guilty of misdemeanor trespass, punishable by a county jail term of up to six months, a fine of up to $1,000 or both, if they enter, without written permission, any other person's cultivated or fenced land, or they enter uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along exterior boundaries and at all roads and trails entering the lands, and do any of the following:

   a) Refuse or fail to leave immediately upon being requested to do so by the owner, owner's agent, or by the person in lawful possession;

   b) Tear down, mutilate, or destroy any sign or notice forbidding trespass or hunting;

   c) Remove or tamper with any lock on any gate on or leading into the lands; or,

   d) Discharge a firearm. (Pen. Code, § 602, subd. (l).)

2) Provides that a person is guilty of misdemeanor trespass if they enter and occupy real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession. (Pen. Code, § 602, subd. (m).)

3) Provides that a person commits one form of trespass to cultivated, fenced or posted land, where they, without the written permission of the landowner, the owner's agent, or of the

person in lawful possession of the land:

a) Willfully enter any lands under cultivation or enclosed by fence, belonging to, or occupied by another person; or

b) Willfully enter upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands. (Pen. Code, § 602.8, subd. (a).)

4) Provides that a person is guilty of trespass where the person enters private property, whether or not the property is open to the public, and the following circumstances apply:

a) The person has been previously convicted of a violent felony on the property, as defined;

b) The owner, the owner's agent, or lawful possessor, has requested a peace officer to inform the person that the property is not open to him or her;

c) The peace officer has informed the person that he or she may not enter the property and informs the person that the notice has been given at the request of the owner or other authorized person; and,

d) The person fails to leave the property upon being asked to do so. (Pen. Code, §602, subd. (t).)

5) Allows for prosecution against any person who refuses or fails to leave property or a structure that belongs to or is lawfully occupied by another and is not open to the general public, upon being requested to leave by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that the officer is acting with such authority. (Pen. Code § 602, subd. (o).)

6) Requires an owner, the owner's agent, or person in lawful possession of the property to make a separate request to a peace officer on each occasion when a peace officer's assistance in dealing with trespass is needed. A single request for assistance may be made to cover a maximum of 30 days when there is a fire hazard to the property or the owner is absent, and the property is not posted as closed to the public. (Pen. Code § 602, subd. (o).)

7) Authorizes an owner, owner's agent, or person in lawful possession of real property to make a single request for law enforcement assistance for a period not to exceed 12 months when the property is closed to the public and posted as being closed, and to inform law enforcement when assistance is no longer desired. (Pen. Code § 602, subd. (o).)

8) Provides that request for law enforcement assistance expire upon transfer of ownership of the property or upon a change in the person in lawful possession. (Pen. Code § 602, subd. (o).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 602 will help local governments deal with public nuisance and graffiti issues by extending the timeframe for Letters of Agency from 30 days up to 12 months based on local ordinances and extends the operative timeframe for trespass authorization letters from 12 months to 3 years if the property is closed to the public and posted as being closed. The bill also will allow for electronic filing of these letters.

   "Currently, in order for cities to complete such abatement, cities and their respective law enforcement agencies are required to obtain an updated letter every 30 days from property owners. It can be extremely difficult for local governments to obtain Letters of Agency in an expeditious manner from unresponsive absentee owners. This results in local governments and their law enforcement agencies having to use valuable staff resources and time for administrative purposes when they could be using their time more productively to serve their communities."

2) **Trespass**: California's trespass major trespass provision – Penal Code section 602 – has nearly an entire alphabet of subdivisions. Most of the subdivisions in Section 602 define separate crimes, typically each with slightly different elements than the other subdivisions. Trespass is generally a misdemeanor, though California law does include a felony for aggravated trespass. (Pen. Code, § 602 subds. (k) & (l).)

3) **Trespass Letters of Authorization:** Under existing law, owners of private property may request law enforcement assistance in ejecting trespassers from their property. If the property is not posted as being closed to the public, the property owner must request law enforcement assistance each time assistance is needed, subject to an exception under which a single request may be valid for 30 days when the owner is absent from the property and there is a fire hazard or the owner is absent. (Pen. Code, §602, subd. (o).) If the property is posted as closed to the public, a single request for law enforcement assistance in ejecting trespassers is effective for 12 months. (Pen. Code, §602, subd. (o).) The request for assistance expires upon transfer of ownership or upon a change in lawful possession of the property. (*Ibid.*) The request for law enforcement assistance in enforcing trespass laws is generally made via a "Trespass Letter of Authority." These letters – also known as "602 Letters" – authorize local authorities to enter the premises to enforce trespass laws in the owner's absence.

   This bill would extend the operative timeframe that trespass letters of authorization submitted to law enforcement remain effective from 12 months to three years for properties closed to the public and posted as being closed to the public. This bill would also extend the operative timeframe for trespass letters of authorization from 30 days to 12 months or a time determined by local ordinance, whichever is shorter, for properties where there is a fire hazard or the owner is absent.

   This bill would also require trespass letters of authorization to be notarized and submitted on a form provided by law enforcement. Additionally, this bill would authorize local governments to accept trespass letters electronically. Notably, many cities already accept electronic letters of authorization and existing law does not prohibit the practice. (See e.g. *Letter of Authority / No Trespass Letter*, City of Merced <https://www.cityofmerced.org/departments/letter-of-authority> [May 18, 2023] ["the Merced Police Department is no

longer doing paper forms for submitting a Letter of Authority. The process is electronic. After submitting the electronic form, the residence will be flagged as having a Letter of Authority on file"]; see also *TRESPASS/602 LETTER,* City of San Luis Obispo <https://www.slocity.org/government/department-directory/police-department/trespass-602-letter> [May 18, 2023] [allowing electronic submission]; *Trespass Authorization Letter*, City of Chula Vista [May 18, 2023] <https://www.chulavistaca.gov/departments/police-department/preventing-crime-and-disorder/reducing-trespassing-problems/trespass-authorization-letter> [electronic submission form].)

3) **Criticisms of Trespass Letters of Authorization**: Trespass letters of authorization are not without controversy. Critics argue that trespass letters of authorization exacerbate homelessness by unfairly punishing homeless individuals. According to a report by the ACLU, "trespass letters of authorization enable police, local businesses, public services, and even homelessness service providers to work together to control the movements of unhoused people and exclude them from both public and private spaces." (*Outside the Law: The Legal War against Unhoused People*, ACLU California (Oct. 2021) <https://www.aclusocal.org/sites/default/files/outsidethelaw-aclufdnsca-report.pdf> [May 18, 2023].) In a case study conducted in Laguna Beach, the ACLU found that of 97 citations issued to unhoused people, 67 resulted from trespass letters of authorization. (*Id.* at p. 51.) And, police have recently considered more harshly enforcing trespassing laws as a way to deal with the homelessness crisis. In Bakersfield, California, county officials proposed a program to fight homelessness by more aggressively prosecuting and incarcerating trespassers. (*Throwing People in Jail on Drug Charges? That's Bakersfield's Idea to Fight Homelessness*, LA Times (Sept. 27, 2019) <https://www.latimes.com/california/story/2019-09-26/homeless-bakersfield-jail-misdemeanor-drug-trespassing> [May 18, 2023]; see also *Cities Try to Arrest Their Way Out of Homeless Problems*, ABC News (June 29, 2020) <https://web.archive.org/web/20220625011111/https://abcnews.go.com/US/wireStory/cities-arrest-homeless-problems-71511969> [May 18, 2023].)

Critics of these approaches argue that strict enforcement of trespass laws create a cycle of arrests, hearings, and fines that make emerging from homelessness all the more difficult. Responding to this criticism, Los Angeles District Attorney George Gascón in 2020 announced a new policy under which his office would decline to prosecute trespass except in specific cases of repeat offense on the same property and imminent safety risks. (*Special Directive 20-07*, Los Angeles County District Attorney George Gascón (Dec. 7, 2020) <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-07.pdf> [May 18, 2023].)

This bill would significantly increase the operative period for trespass letters. The Legislature should consider whether extending the operative timeframe that trespass letters of authorization could negatively affect people with unstable housing.

4) **Argument in Support**: According to *California Contract Cities Association*, "By extending the effective duration of Letters of Agency from 30 days to 12 months, and widening the operative time frame of trespass authorization letters from 12 months to 3 years, SB 602 would significantly improve the current process for local governments to manage graffiti removal and other public nuisances. This legislation would in turn have a very positive impact on communities across the state."

5) **Prior Legislation**:

a) SB 1110 (Melendez), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 1110 failed passage on the Assembly floor.

b) AB 1686 (Medina), Chapter 453, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present.

c) SB 1295 (Block), Chapter 373, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present, and provides that a request for assistance shall expire upon transfer of ownership of the property or upon change of the person in lawful possession.

d) AB 668 (Lieu) Chapter 531, Statutes of 2010, expanded the scope of criminal trespass by providing that during a specified timeframe it is unlawful for a person who has been convicted of any felony, any misdemeanor, or any specified infraction, committed upon a particular private property, to enter or refuse or fail to leave that property after being informed by a peace officer that the property is not open to the particular person, or to refuse or fail to leave when asked, as specified.

e) SB 1486 (Schiff), Chapter 563, Statutes of 2000, made a person who enters a noncommercial residence without the owner's consent, while a resident or another person authorized to be in the dwelling is present at any time during the course of the incident, guilty of aggravated trespass punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than $1,000, or by both.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Bellflower (Sponsor)
California Apartment Association
California Contract Cities Association
California State Sheriffs' Association
City of Banning
City of Colton
City of Corona
City of Downey
City of Eastvale
City of Hawaiian Gardens
City of Lakewood
City of Menifee
City of Norwalk
City of Paramount
City of Perris
City of Pico Rivera

City of Riverside
City of Rosemead
City of Whittier
City of Wildomar
County of Riverside
League of California Cities
Los Angeles County Division, League of California Cities
Riverside County Sheriff's Office
Riverside County Supervisor Karen Spiegel
Southwest California Legislative Council

Opposition

None submitted.

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

Date of Hearing: June 13, 2023
Counsel: Andrew Ironside

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

SB 762 (Becker) – As Amended March 22, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to require a local correctional facility to have a procedure for affirming that an incarcerated individual is alive and well during a safety check. Specifically, **this bill:**

1) Requires BSCC, during the first regularly scheduled review of the minimum standards for local correctional facilities that occurs after January 1, 2024, to update those standards to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check.

2) Requires the updated standards to include clear instructions for adequate safety checks of incarcerated individuals within local detention facilities, including, but not limited to, in-person hourly observations that affirm clear signs of life and wellness of those individuals.

3) Includes legislative findings and declarations.

EXISTING LAW:

1) Establishes the BSCC to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system. (Pen. Code, § 6024, subds. (a) & (b).)

2) Provides that BSCC's mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice-investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

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

4) Requires BSCC to establish minimum standards for local correctional facilities. (Pen. Code, § 6030, subd. (a).)

5) Requires BSCC to review established minimum standards for local correctional facilities biennially and make any appropriate revisions. (Pen. Code, § 6030, subd. (a).)

6) Requires the minimum standards to include, but not be limited to, health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training. (Pen. Code, § 6030, subd. (b).)

7) Requires the minimum standards to require that at least one person on duty at the facility is knowledgeable in the area of fire and life-safety procedures. (Pen. Code, § 6030, subd. (c).)

8) Requires BSCC, in establishing minimum standards, to seek the advice of experts and interested stakeholders, as specified. (Pen. Code, § 6030, subd. (g)(1)-(5).)

9) Requires safety checks of incarcerated persons at local correctional facilities to be conducted at least hourly through direct visual observation of all people held and housed in the facility. (Cal. Code Regs., tit. 15, § 1027.5, subd. (a).)

10) Provides that there shall be no more than a 60-minute lapse between safety checks. (Cal. Code Regs., tit. 15, § 1027.5, subd. (b).)

11) Requires safety checks for people in sobering cells, safety cells, and restraints to occur more frequently, as specified. (Cal. Code Regs., tit. 15, § 1027.5, subd. (c).)

12) Provides that there shall be a written plan that includes the documentation for all safety checks, including:

    a) The actual time at which each individual safety check occurred;

    b) The location where each individual safety check occurred, such as a cell, module, or dormitory number; and,

    c) Initials or employee identification number of staff who completed the safety check. (Cal. Code Regs., tit. 15, § 1027.5, subd. (e)(1)-(3).)

13) Requires a documented process by which safety checks are reviewed at regular defined intervals by a supervisor or facility manager, including methods of mitigating patters of inconsistent documentation, or untimely completion of, safety checks(Cal. Code Regs., tit. 15, § 1027.5, subd. (f).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Incarcerated people deserve the same rights to health and safety as any other resident under the law. Incarcerated individuals are particularly vulnerable to physical and mental health issues due to the harsh living conditions, overcrowding, and lack of access to proper medical care in jail. At the bare minimum, no person should endure undue bodily injury or death while in custody.

   "It is deeply concerning that there are not adequate protocols to protect the health and safety of incarcerated people. The conditions in county jails vary greatly from facility to facility,

and with many standards up for broad interpretation, some facilities are unnecessarily endangering the well-being of those in custody. This lack of consistency creates an unfair and unequal system that disproportionately affects vulnerable populations, such as minorities and those with low-income backgrounds.

"Ultimately, the state has a responsibility to ensure that all individuals, including those who are incarcerated, are treated with dignity and respect. This bill provides the BSCC with the opportunity to address these concerns by updating their standards and procedures to ensure that an incarcerated person is alive and well while in custody. In doing so, they shall establish a clear and consistent standard across the board for all county jails to abide by."

2) **BSCC**: The BSCC was established in 2012 and is responsible for providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile justice systems. The BSCC has four primary responsibilities: setting standards for and inspecting local detention facilities; setting standards for the selection and training of local correctional staff; administering various grant programs related to recidivism and reduction strategies; and administering the state's construction financing program for local detention facilities. According to the May Revision of the state budget, the total estimated expenditures for all BSCC programs during the current budget year is near $850 million. (https://ebudget.ca.gov/budget/2023-24MR/ -/Department/5227)

   Current law requires the BSCC to maintain minimum standards for the construction and operation of local detention facilities, to inspect each local detention facility biennially to assess compliance with BSCC standards, and to prepare, distribute, and publish inspection reports. (Pen. Code, § 6030 et seq.) Notably, although the BSCC is required to inspect local detention facilities to determine compliance with the standards and to report noncompliance, the BSCC is not authorized under state law to enforce the standards (e.g., by fining a local detention facility).

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

3) **State Auditor's Report:** This bill was introduced in response to a State Auditor report published last year on in-custody deaths of incarcerated individuals under the care and custody of the San Diego County Sheriff's Department. (State Auditor, San Diego County Sheriff's Department It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody (February 3, 2022), Report 2021-109 <http://auditor.ca.gov/pdfs/reports/2021-109.pdf> [as of June 5, 2023].) Between 2006 and 2020, 185 people died in San Diego County's jails—one of the highest totals among counties in the state. Due to the high number of in-custody deaths, the Joint Legislative Audit

Committee requested an audit of the San Diego County Sheriff's Department. With respect to safety checks, the report noted:

> [P]erforming safety checks is a key component of ensuring the well-being of individuals in detention facilities. Conducting these checks—which state law requires hourly through direct visual observation—is the Sheriff's Department's most consistent means of monitoring for medical distress and criminal activity. Nonetheless, in our review of 30 in-custody deaths, we found instances in which deputies performed these checks inadequately. For example, based on our review of video recordings, we observed multiple instances in which staff spent no more than one second glancing into the individuals' cells, sometimes without breaking stride, as they walked through the housing module. When staff members eventually checked more closely, they found that some of these individuals showed signs of having been dead for several hours. Although the Sheriff's Department's assistant sheriff of detentions indicated that the department has a process for periodically monitoring whether staff members adequately perform safety checks, it is not documented in policy. In contrast, the Riverside County Sheriff's Department has a formal policy that requires supervising staff to regularly review videos of safety checks being performed, and it is thus in a better position to assess the quality of safety checks.
> (*Id.* at p. 2.)

The audit found that some of deficiencies of the Sheriff's Department's policies were the result of statewide corrections standards that were "not sufficiently robust." (*Id.* at pp. 2-3.) For example, regulations established by the BSCC "do not describe the actions that constitute an adequate safety check: rather, they simply state that safety checks must be conducted at least hourly through direct visual observation." (*Id.* at p. 3.)

The Auditor's report concluded with several key recommendations, including that the Legislature amend state law to require the BSCC to amend its regulations pertaining to safety checks. (*Id.* at p. 56.) The report specifically recommended that safety checks "include a procedure for checking to see that each individual is alive." (*Ibid.*) This bill would require the BSCC to update the standards for local correctional facilities to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check.

4) **Argument in Support**: According to the *California Public Defenders Association*, "Currently, the Board of State and Community Corrections provides minimal standards for local correction facilities regarding the health and safety of incarcerated persons. Currently, California Code of Regulations, Title 15, section 1027.5 requires a visual safety check at least once each hour and requires a plan for documentation. There is nothing mandating that the incarcerated person is confirmed to be alive and well, only that someone has visually looked at the person. The standards are reviewed every six months. This bill would require, in the next revision after January 1, 2024, the be [sic] Code of Regulations be amended to require that during the safety check it is confirmed that the person is alive and well.

"Based on a report that found a large number of jailed individuals had died in San Diego over a 15-year period, the Joint Legislative Audit Committee ordered an audit of the San Diego Sherriff's policies and regulations related to the deaths. Michael S. Tilden, CPA, the Acting

California State Auditor wrote in his report:

> In addition to providing adequate health care, performing safety checks is a key component of ensuring the well-being of individuals in detention facilities. Conducting these checks—which state law requires hourly through direct visual observation—is the Sheriff's Department's most consistent means of monitoring for medical distress and criminal activity. Nonetheless, in our review of 30 in-custody deaths, we found instances in which deputies performed these checks inadequately. For example, based on our review of video recordings, we observed multiple instances in which staff spent no more than one second glancing into the individuals' cells, sometimes without breaking stride, as they walked through the housing module. When staff members eventually checked more closely, they found that some of these individuals showed signs of having been dead for several hours… .
>
> The problems we identified with the Sheriff's Department's policies are in part the result of statewide corrections standards that are not sufficiently robust. The Board of State and Community Corrections (BSCC) establishes in regulation the minimum standards that local detention facilities must follow. Every local jail system throughout the State uses these standards to create policies for inmate safety and care. However, some of the standards are insufficient for maintaining the safety of incarcerated individuals. For example, …. they do not describe the actions that constitute an adequate safety check: rather, they simply state that safety checks must be conducted at least hourly through direct visual observation. Given that the annual number of incarcerated individuals' deaths in county jails across the State increased from 130 in 2006 to 156 in 2020, improving the statewide standards is essential to ensuring the health and safety of individuals in custody in all counties.

"Since the author and the Legislature are reviewing Penal Code Section 6030, either in this bill or in future legislation, we suggest adding additional protections for Californians who are incarcerated. For example, in section (e) providing for more expansive reproductive care ensuring that a pregnant woman receive not only information about child birth and child care, but also her reproductive rights and any options that may be available to her under the law and in section (g)(5) adding the State Department of Health, local juvenile justice commissions, physicians, psychiatrists, local public health officials, and other interested persons to the list of consultants, instead of just The California State Sheriffs' Association and Chief Probation Officers' Association of California, for females in local jails and juvenile facilities.

"SB 762 has the potential to save many lives by requiring jailers to make sure the incarcerated individual is alive. Ultimately, this very simple change will save lives and perhaps even costs associated with receiving delayed medical care."

5) **Related Legislation**:

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

b) AB 898 (Lackey), would require probation departments to annually report to BSCC all injuries to juvenile hall staff and juvenile hall residents resulting from an interaction with

staff and a resident. AB 898 is pending referral in the Senate Rules Committee.

6) **Prior Legislation**:

a) AB 2343 (Weber), of the 2021-2022 Legislative Session, was nearly identical to AB 268 (Weber) above. The Governor vetoed AB 2343.

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

c) SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011, removed the Corrections Standards Authority from CDCR and created the BSCC, beginning July 1, 2012.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

None submitted

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

Amended Mock-up for 2023-2024 SB-762 (Becker (S))

Mock-up based on Version Number 98 - Amended Senate 3/22/23
Submitted by: Andrew Ironside, 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) Conditions in county jails should not cause undue great bodily harm or death to incarcerated individuals.

(b) The Board of State and Community Corrections should provide sheriff's departments clear and consistent health, safety, and personnel training standards.

(c) Under current standards, county jails do not have specific enough direction from the board to be required to affirm that incarcerated individuals are alive and well during safety checks.

(d) The board's health and safety standards should therefore include clearer instructions for adequate safety checks of incarcerated individuals within county jails, including, but not limited to, in-person hourly observations that affirm clear signs of life and wellness of those individuals.

SEC. 2. Section 6030 of the Penal Code is amended to read:

6030. (a) The Board of State and Community Corrections shall establish minimum standards for local correctional facilities. The board shall review those standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following areas: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in local correctional facilities, and personnel training.

(c) The standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

(d) The standards shall also include requirements relating to the acquisition, storage, labeling, packaging, and dispensing of drugs.

(e) The standards shall require that inmates who are received by the facility while they are pregnant be notified, orally or in writing, of and provided all of the following:

(1) A balanced, nutritious diet approved by a doctor.

(2) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.

(3) Information pertaining to childbirth education and infant care.

(4) A dental cleaning while in a state facility.

(f) The standards shall provide that a woman known to be pregnant or in recovery after delivery shall not be restrained, except as provided in Section 3407. The board shall develop standards regarding the restraint of pregnant women at the next biennial review of the standards after the enactment of the act amending this subdivision and shall review the individual facility's compliance with the standards.

(g) In establishing minimum standards, the board shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in correctional facilities:

The Department of Corrections and Rehabilitation, state and local juvenile justice commissions, state and local correctional officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections and Rehabilitation, state and local correctional officials, and other interested persons.

(5) For female inmates and pregnant inmates in local adult and juvenile facilities:

The California State Sheriffs' Association and Chief Probation Officers' Association of California, and other interested persons.

(h) **(1)** During the first regularly scheduled review of the standards required pursuant to subdivision (a) that occurs after January 1, 2024, the board shall update those standards to require a local detention facility to include a procedure for affirming that an incarcerated individual is alive and well during a safety check.

(2) The updated standards shall include clear instructions for adequate safety checks of incarcerated individuals within local detention facilities, including, but not limited to, in-person hourly observations that affirm clear signs of life and wellness of those individuals.

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 13, 2023
Chief Counsel: Sandy Uribe

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

SB 852 (Rubio) – As Amended June 7, 2023

SUMMARY: Clarifies that only a probation officer or other peace officer may conduct a search or a seizure of a person on specified forms of supervised release. Specifically, **this bill**:

1) Specifies that a person who is granted probation is subject to search or seizure as part of the terms and conditions of probation only by a probation officer or other peace officer.

2) Specifies that a person participating in a home detention or electronic monitoring program is subject to verification of compliance with conditions of detention only by a probation officer or other peace officer.

3) Specifies that a person who is serving a part of their sentence on mandatory supervision is subject to search or seizure as part of the terms and conditions of supervision only by a probation officer or other peace officer.

4) Contains legislative findings and declarations.

EXISTING LAW:

1) Declares specified persons to be peace officers and extends different levels of authority to different types of peace officers. (Pen. Code, §§ 830-830.55.)

2) Declares that certain persons are not peace officers, but may exercise the power of arrest during the course and scope of their employment if they have completed a training course prescribed by the Commission on Peace Officer Standards and Training in the exercise of that power. (Pen. Code, § 830.7.)

3) Provides that federal criminal investigators and law enforcement officers are not California peace officers, but may exercise the power of arrest of a peace officer under specified circumstances. (Pen. Code, § 830.8.)

4) Provides that, notwithstanding any other law, United States Immigration and Customs Enforcement officers and United States Customs and Border Protection officers are not California peace officers. (Pen. Code, § 830.85.)

5) Entitles people the right to be secure in their persons, houses, papers, and effects and not to be subject to unreasonable searches and seizures. (U.S. Const., Fourth Amend. & Cal. Const. article 1, sec. 13 of the California Constitution.)

6) Defines "probation" as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

7) Defines "conditional sentence" as "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

8) Authorizes the court to impose and require any or all reasonable conditions of probation as it may determine are fitting and proper to the end that justice may be done, that amends may be done to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. (Pen. Code, § 1203.1, subd. (j).)

9) Provides that when a defendant is sentenced to a "split sentence" under criminal justice realignment, during the period of mandatory supervision the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation. (Pen. Code, § 1170, subd. (h)(5)(B).)

10) Provides that a person on parole or on post release community supervision is subject to a search or seizure by a probation or parole officer or other peace officer at any time of the day or night, with or without a search warrant or with or without cause. (Pen. Code, § 3067, subd. (b)(3).)

11) Prohibits law enforcement agencies, including school police and security departments, from using resources to investigate, interrogate, detain, detect, or arrest people for immigration enforcement purposes. (Gov. Code, § 7284.6.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "No one should be afraid to come forward when they are the victim of a crime because they have lost trust in law enforcement. But unfortunately, many immigrant communities are afraid to interact with law enforcement professionals because of deceptive actions by Immigration and Customs Enforcement (ICE) agents. One tactic that ICE has used in California to deceive our immigrant communities is known as a probation ruse, where ICE agents pretend to be probation officers in order to trick people into cooperating with them. A person on probation is required to comply with searches at any time, so these people are deceived into complying with ICE agents and find themselves placed under arrest.

   "California's state and local law enforcement professionals work hard to develop trust with the communities they serve. That trust is jeopardized when ICE agents impersonate probation officers as a tactic to coerce people into cooperating with them. It is wrong for ICE to deceive our immigrant communities. SB 852 will safeguard and protect the public's trust in law enforcement by specifying that probation searches can only be conducted by probation officers or peace officers, putting a stop to ICE agents falsely identifying themselves as

probation officers."

2) **Background**: In 2017, the Legislature clarified that federal Immigration and Customs Enforcement (ICE) officers and Customs and Border Protection officers are not California peace officers. (Pen. Code, § 830.85.) The impetus behind that legislation, AB 1440 (Kalra), Chapter 116, Statutes of 2017, was to prevent ICE agents from misrepresenting themselves as licensed peace officers in order to compel or coerce individuals into cooperating with them under false pretenses.

According to the background information provided by the author, despite this clarification, ICE agents continue to pose as peace officers. For example, a lawsuit filed by the ACLU of Southern California alleges that ICE conducts immigration enforcement operations at homes without a warrant or valid consent by using unlawful ruses where ICE officers impersonate police or misrepresent their governmental identity or purpose to residents. (See *Kidd v. Mayorkas*, Case No. 2:20-c-v-03512-ODW-JPR, https://www.aclusocal.org/en/cases/kidd-v-mayorkas [as of June 5, 2023].) In the February 2023 court order in that case granting class action certification the order states:

> The parties dispute the content of ICE's policies, and the extent of its practices, regarding mentioning an arrest target's probationary status or impersonating a probation officer. ICE officers are typically aware of an arrest target's probationary status because, prior to an enforcement action, ICE runs a criminal rap sheet on the target that indicates, among other things, the target's probationary status. (R.H. Dep. 306:17-24.) Defendants suggest that the only way field officers use this information is to remind the arrest target that they are on probation and to threaten to contact the target's probation officer in the event the target refuses to exit the residence. (Opp'n 6-7; R.H. Dep. 304:24-306:5.) Ice officer testimony reflects that ICE officer's practice was to mention a target's probationary status as part of their effort to convince the target to leave the residence, but that ICE officers did not actually impersonate probation officers. (Saarman Gonzalez Decl. Ex. 32 ("J.H. Dep.") 196:18-21 ("It would be as simple as, you know, 'You are on [c]ourt-[o]rdered probation, and you have to listen to all law enforcement authorities as a condition of your release, so could you come outside.'"); *id.* at 197:4 ("[T]o clarify, we don't say we are probation.").) (Kidd v. Mayorkas, order granting plaintiff's motion to certify class, filed Feb. 7, 2023, at pp. 5-6, available at: https://www.aclusocal.org/en/cases/kidd-v-mayorkas [as of June 5, 2023].)

This bill seeks to prohibit ICE agents from impersonating probation officers or other California peace officers to coerce an undocumented person from cooperating under the guise of misrepresentation by limiting the authority to conduct searches and seizures of persons on supervised release only to probation officers or other peace officers.

3) **Forms of Supervised Release**: Existing law provides that all individuals on parole and post-release community supervision (PRCS) are subject to search and seizure by parole officers, probation officers, and other peace officers. This condition of parole and PRCS is mandated by statute. (See Pen. Code, § 3067, subd. (b)(3).)

Unlike persons on parole or PRCS, not all persons on probation and other forms of supervised release are automatically subject to search and seizure conditions; rather, the person is subject to search and seizure per court order. The supervised person waives their

constitutional right to privacy and agrees to search and seizure as a condition of supervised release. Accordingly, under existing law, there are no provisions specifying who can conduct a search of persons on other forms of supervised release, such as mandatory supervision[1], probation, home detention, or electronic monitoring.

This bill provides that all person subject to a warrantless search and seizure condition under these forms of supervised release are subject to search or seizure only by a probation officer or other peace officer.

4) **Argument in Support**: According to *ACLU California Action*, a co-sponsor of this bill, "California Penal Code Section 3067, which discusses the terms and conditions of parole, limits "searches and seizures" to be conducted "by a probation or parole officer or other peace officer." Cal. Pen. Code § 3067(b)(3) (emphasis added). In 2017, the California Legislature clarified that ICE officers are not California peace officers. See Cal. Pen. Code § 830.85. However, California Penal Code Section 1203, governing the rules of probation, does not similarly limit searches to probation officers or peace officers.

"In practice, the absence of this limitation, has allowed ICE officers to target individuals on probation for enforcement operations. In conducting enforcement operations, particularly at the home, ICE officers commonly employ a "probation ruse" – e.g., ICE represents themselves as probation officers, claim they are conducting a probation check, or after knocking on the person's door, ICE (without identifying themselves as such) ask to confirm that the person is on probation and ask them to either step outside of their home or grant officers consent to enter their home. Individuals who are on probation typically have no choice but to comply with officers' requests because the terms of their probation require them to permit probation officers to access their homes and persons. Under current law, ICE officers likely aren't authorized to exploit probation in this manner (because the existing definition of "peace officer" should apply to all probation sentences). Yet, ICE regularly exploits the ambiguity between "law enforcement" and "peace officer" in regard to probation in order to arrest probationers using methods that would be unconstitutional if used on non-probationers.

"In the Los Angeles area of responsibility, ICE has conducted at least 19,000 "at-large" arrests from 2014 to 2021. A sizable number of these arrests occur at residences. In April 2020, the ACLU of Southern California filed *Kidd v. Mayorkas*, a lawsuit challenging, among other things, probation ruses.

"SB 852 seeks to modify the California Penal Code Section 1203 clarify that probation searches can be conducted by probation officers or peace officers. Currently, this language does not exist in Section 1203.

"By limiting probation searches and seizures to be conducted by probation officers or peace officers, SB 852 would not allow ICE officers to rely on, and exploit, a person's probation status when conducting home enforcement operations."

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[1] Under realignment, where a felon is sentenced to county jail, the court must suspend execution of a concluding portion of the sentence, "[u]nless the court finds that, in the interests of justice, it is not appropriate in a particular case." (Pen. Code, § 1170, subd. (h)(5)(A).) During the period of suspended execution, "known as mandatory supervision" the felon is supervised by the county probation officer. (Pen. Code, § 1170, subd. (h)(5)(B).)

5) **Related Legislation**: AB 1306 (Carrillo) prohibits the California Department of Corrections and Rehabilitation from cooperating with the United States Department of Homeland Security when specified persons are being released. AB 1306 is pending referral in the Senate.

6) **Prior Legislation**: AB 1440 (Kalra), Chapter 116, Statutes of 2017, specified that federal Immigration and Customs Enforcement officers and Customs and Border Protection officers are not California peace officers.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Sponsor)
California Immigrant Policy Center
California Public Defenders Association
California Rural Legal Assistance Foundation
Coalition for Humane Immigrant Rights
Communities United for Restorative Youth Justice (CURYJ)
Immigrant Defenders Law Center
Initiate Justice Action
Inland Coalition for Immigrant Justice
Kern County Criminal Justice Coalition
Smart Justice California

Opposition

None submitted

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