California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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

AGENDA

Tuesday, June 15, 2021
9 a.m. -- State Capitol, Room 4202

SPECIAL ORDER

1.	ACA 3	Kamlager	Involuntary servitude.

HEARD IN FILE ORDER

REGULAR ORDER OF BUSINESS

2.	SB 71	McGuire	Infractions: community service: education programs.
3.	SB 73	Wiener	Probation: eligibility: crimes relating to controlled substances.
4.	SB 81	Skinner	PULLED BY THE AUTHOR.
5.	SB 383	Cortese	Juveniles: informal supervision: deferred entry of judgment.
6.	SB 416	Hueso	Corrections: educational programs.
7.	SB 494	Dodd	Law enforcement: training.
8.	SB 629	Roth	Identification cards.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at https://apsf.assembly.ca.gov/. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

Due to ongoing COVID-19 safety considerations, including guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal, Remote Testimony Station or phone. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building. We encourage the public to monitor the committee's website for updates

Date of Hearing: June 15, 2021
Counsel: David Billingsley

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

ACA 3 (Kamlager) – As Introduced December 18, 2020

SUMMARY: Deletes language from the California Constitution that permits involuntary servitude as punishment for crime.

EXISTING FEDERAL LAW:

1) States that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (U.S. Const., 13th Amendment.)

2) Makes it a crime to knowingly provide or obtain the labor or services of a person by any one of, or by any combination of, the following means:

   a) By means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

   b) By means of serious harm or threats of serious harm to that person or another person;

   c) By means of the abuse or threatened abuse of law or legal process; or,

   d) By means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint. (18 U.S.C. 1589, subd. (a)(1)-(4).)

EXISTING LAW:

1) Prohibits slavery. (Cal. Constitution, Art. I, sec. 6.)

2) Prohibits involuntary servitude except to punish crime. (Cal. Constitution, Art. I, Sec. 6.)

3) Provides that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8 or 12 years and a fine of not more than $5,000. (Pen. Code, § 236.1, subd. (a).)

4) Specifies that it is felony to hold any person in involuntary servitude, or assumes rights of ownership over any person, or who sells any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another. (Pen. Code, § 181.)

5) Makes it a misdemeanor offense for any person, or an agent, manager, superintendent, or officer who having the ability to pay, willfully refuses to pay wages due and payable after demand has been made, or falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due. (Lab. Code, § 216.)

6) States that every able-bodied person committed to the custody of the California Department of Corrections and Rehabilitation (CDCR) is obligated to work as assigned by department staff and by personnel of other agencies to whom the inmate's custody and supervision may be delegated. Assignment may be up to a full day of work, or other programs including rehabilitative programs, as defined, or a combination of work or other programs. (Code of Regs., Title 15, § 3040, subd. (a).)

7) Specifies that inmates in CDCR are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of CDCR and perform the duties assigned to them shall be eligible to earn Good Conduct Credit as specified. (Code of Regs., Title 15, § 3043, subd. (a).)

8) Provides that pay rates at each CDCR facility for paid inmate assignments should reflect the level of skill and productivity required, and will be set with the assistance of the Institutional Inmate Pay Committee. Monthly rates applies to full time employment in the job classifications and will be paid from the support budget or inmate welfare funds. (Code of Regs., Title 15, § 3041.2, subd. (a)(1)(2).)

9) States that CDCR shall require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Director of Corrections. (Pen. Code, § 2700.)

10) Specifies that whenever by any statute a price is required to be fixed for any services to be performed in connection with the work program of CDCR, the compensation paid to prisoners shall be included as an item of cost in fixing the final statutory price. (Pen. Code, § 2700.)

11) States that one of the purposes of the Prison Industry Authority (PIA) is to operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by CDCR, thereby reducing the cost of its operation. (Pen. Code, § 2801, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "On the heels of the nationwide abolition movement, The California Abolition Act seeks to abolish forced labor and involuntary servitude unconditionally in the state of California.

"As it stands the Constitution of our State prohibits slavery and involuntary servitude -- "except for the punishment of crime." Abolition is not conditional. In the year 2021, in our great state of California— often touted as one of the most progressive states in the country— this is unacceptable.

"Dissolving the remnants of slavery and racial inequality is more important now than ever before. Today, 12 states prohibit enslavement and involuntary servitude, however, their constitutions include the provision "with an exception of criminal punishments"; 9 states permit involuntary servitude as a criminal punishment - California being one of them; and one state (Vermont) permits involuntary servitude to "pay a debt, damage, fine, or cost." Our state constitution has yet to reflect the values of equality and justice that Californians now hold so dear.

"The California Abolition Act would amend Article 1, Section 6 of the California Constitution to prohibit slavery and involuntary servitude without exception."

2) **Involuntary Servitude:** The 13th Amendment of the U.S. Constitution was ratified in 1865. The 13th Amendment prohibited slavery and involuntary servitude. However, an exception was allowed if involuntary servitude was imposed as punishment for a crime. Article I, section 6, of the California Constitution contains the same prohibitions on slavery and involuntary servitude and the same exception for involuntary servitude as punishment for crime. This amendment to the California Constitution seeks to prohibit involuntary servitude under all circumstances by eliminating the exception for punishment of a crime. Passage of this constitutional amendment by the Legislature would place the issue before the California voters.

The United States Supreme Court discussed the intent of the Thirteenth Amendment as it applied to involuntary servitude in the case of *Pollock v. Williams*, 322 U.S. 4 (1944).

> The undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. Forced labor in some special circumstances may be consistent with the general basic system of free labor. For example, forced labor has been sustained as a means of punishing crime, and there are duties such as work on highways which society may compel. But in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers. When the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work. (*Pollock v. Williams* (1944), 322 U.S. 4, 17-18.)

The Fifth Circuit Court of Appeal has defined "Involuntary servitude" as "an action by the master causing the servant to have, or to believe he has, no way to avoid continued service or confinement." When the employee has a choice, even though it is a painful one, there is no involuntary servitude. "A showing of compulsion is thus a prerequisite to proof of involuntary servitude." (*Watson v. Graves* (5th Cir. 1990), 909 F.2d 1549, 1552 (citations omitted).) The U.S. Supreme Court has stated, ". . ., our precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or

threatened use of physical or legal coercion." (*United States v. Kozminski* (1988), 487 U.S. 931, 944.)

Courts have also held that the 13th Amendment is not violated by the practice of forced labor for a public purpose without pay. The United States Supreme Court found requirements by states that male citizens be required to work without pay for a few days a year did not violate the Thirteenth Amendment. (*Butler v. Perry* (1916), 240 U.S. 328.) Compulsory jury service (*Butler*. at 333) and compulsory military service (*Arver v. United States* (1918) 245 U.S. 366.) have also been upheld. Whether there is compensation or how much compensation is paid in these compulsory service situations is not a constitutional issue. (*Hurtado v. United States* (1973), 410 U.S. 578, 588, 589.)

The California Supreme Court has interpreted the prohibition on slavery and involuntary servitude contained in Article I, section 6 of the California Constitution to be coextensive with the protection afforded by the 13th Amendment. (*Moss v. Superior Court* (1998), 17 Cal. 4th 396, 418.)

3) **Senate Joint Resolution 81 and House Joint Resolution 106:** Two pieces of federal legislation have been introduced in the United States Congress which mirror the language contained in this constitutional amendment. Senator Merkley of Oregon introduced Senate Joint Resolution 81 on December 2, 2020 and Representative Hall introduced House Joint Resolution 106 on December 16, 2020. Both resolutions call for a constitutional amendment to remove the language in the 13th Amendment of the U.S. Constitution regarding the exception to the prohibition on involuntary servitude for punishment of a crime.

   Senator Merkley issued a press release in conjunction with the introduction of Senate Joint Resolution 81, which provided a context for the motivation to pursue the constitutional amendment. That press release discussed the events that followed the ratification of the 13th Amendment. The press release noted that, after the ratification of the 13th Amendment Southern jurisdictions arrested Black Americans in large numbers for minor crimes, like loitering or vagrancy, codified in new 'Black Codes,' which were only applied to Black Americans. These jurisdictions relied on the exception to involuntary servitude contained in the punishment clause to enable sheriffs to lease out imprisoned individuals to work landowners' fields, which in some cases included the very same plantations where they had been enslaved. The practice grew in prevalence and scope to the point that, by 1898, 73% of Alabama's state revenue came from renting out the forced labor of Black Americans. (https://www.merkley.senate.gov/news/press-releases/merkley-clay-propose-constitutional-amendment-to-close-slavery-loophole-in-13th-amendment-2020)

   Senator Merkley stated that, "The exception to the 13th Amendment's ban on slavery corrupted criminal justice into a tool of racist control of Black Americans and other people of color, and we see that legacy every day in police encounters, courtrooms, and prisons throughout our country." (Id.)

   Each resolution has been referred to the Judiciary Committee of their respective houses.

4) **Inmate Work in Prisons:** Federal courts have held that the U.S. Constitution does not prohibit inmates from being required to work and does not provide inmates a right to wages for work done in custody. In the case of *Serra v. Lapin*, 600 F.3d 1191 (9th Cir. 2010),

current and former federal prisoners alleged that the low wages they were paid for work performed in prison violated their due process rights and various sources of international law.

In *Serra*, the federal inmates were paid for their work in prison based on a schedule set by the Inmate Work and Performance Pay Program. The wages were established by regulations promulgated by the Bureau of Prisons under the authority of the Attorney General. (*Id.* at 1195.) The inmates earned between $ 19.00 and $ 145.00 per month at rates as low as nineteen cents per hour. The inmates contended that by paying them such low wages, that the Federal Bureau of prisons denied the inmates' rights. (*Id.*)

The Ninth Circuit Court of Appeals held that the U.S. Constitution does not provide prisoners any substantive entitlement to compensation for their labor. (*Id.* at 1196 (citing *Piatt v. MacDougall*, 773 F.2d 1032, 1035 (9th Cir. 1985) (holding that the state does not deprive a prisoner of a constitutionally protected liberty interest by forcing him to work without pay).) The court noted that, "Although the Constitution includes, in the Thirteenth Amendment, a general prohibition against involuntary servitude, it expressly excepts from that general prohibition forced labor "as a punishment for crime whereof the party shall have been duly convicted." (*Id.*)

In addition to relying on the exception to involuntary servitude for punishment for a crime, federal courts have found that inmate work does not constitute "involuntary servitude" when the inmate has a choice to work. The Fifth District Court of Appeals found that inmate participation in a work release program did not constitute involuntary servitude, because the inmates were not "compelled" to participate in the work release program. The court acknowledged that he choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing may have indeed been "painful" and quite possibly illegal under state law, but stated that the inmates were not forced to work or continued to work against his will. (*Watson v. Graves* (1990), 909 F.2d 1549, 1552.).

5) **Inmate Work in CDCR:** Inmates in CDCR are required to work or participate in rehabilitative or educational programs. When an inmate arrives at a prison reception center they go through a classification process. The classification process determines the security level of the CDCR facility where the inmate will be housed.

During the classification process, inmates are placed on waiting lists for jobs and for rehabilitative programs. The classification process for jobs begins upon reception and periodically throughout an inmate's term. Each determination affecting an inmate's placement within an institution/facility, transfer between facilities, program participation, work group, or custody designation is made by a classification committee based on the inmate's case factors and input from the inmate.

Standard CDCR jobs do not have minimum requirements, such as a high school diploma/GED certificate. Standard jobs can be part-time, full-time, and can include weekend/night shifts. These jobs include clerks, porters, dining work, yard workers and plant operations (painter, plumber, carpenter, etc.).

Some inmates are eligible to participate in jobs through Prison Industry Authorities. PIA jobs have specific requirements that an incarcerated individual must possess in order to qualify for a particular job. This can include factors such as high school diploma/GED, being

disciplinary free for a set period of time, as well as their release date history. There is an application process for PIA jobs and every job has a certification or multiple certifications attached to it. PIA jobs are higher paying than the standard job and incarcerated individuals receive industry-accredited certifications, credits, and training that can be applied upon release for jobs such as meat cutting, coffee roasting, optical, dental, and health care facilities maintenance.

Participating in work while incarcerated can help promote rehabilitation. Inmates can potentially gain skills that can be utilized to facilitate their reintegration in society. Those skills can range from technical knowledge needed to pursue a specific trade or the life skills helpful in navigating work place environments. However, given the potentially coercive nature of work within a custodial environment there exists the danger for abuse of inmate work. The history of prison labor in the United States demonstrates those dangers.

It is not clear how the elimination of the exception to involuntary servitude for punishment of crime in the California Constitution would affect inmate labor in California prisons as it currently exists. California courts would not be able to rely on the justification of punishment in examining an inmate's claim of that their working conditions violate the California Constitution because it constitutes involuntary servitude. However, courts would still have to evaluate whether the working conditions for California inmates meets the standard of involuntary servitude and whether the required labor (if otherwise qualifying as involuntary servitude) might satisfy a legitimate public purpose.

6) **Payment for Inmate Labor in CDCR:**

Existing law specifies that pay rates at each prison for paid inmate assignments should reflect the level of skill and productivity required, and will be set with the assistance of the Institutional Inmate Pay Committee. (15 CCR § 3041.2 (a)(1)(2).) Current pay rates (most jobs) are laid out below:

Skill Level	Hourly (Min/Max)	Monthly (Min/Max)
Level 1 (Lead Person)	$0.32-$0.37	$48-$56
Level 2 (Special Skill)	$0.19-$0.32	$29-$48
Level 3 (Technician)	$0.15-$0.24	$23-$36
Level 4 (Semi-Skilled)	$0.11-$0.18	$17-$27
Level 5 (Laborer)	$0.08-$0.13	$12-$20

7) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "Despite the Thirteenth Amendment's outlawing of slavery and involuntary servitude, the California Constitution still contains this conditional language: "Involuntary servitude is prohibited except to punish crime." Over 94,000 Californians are currently incarcerated in state prison. African Americans account for 28% of the prison population and less than 6% of California's overall population. Although no courts explicitly include labor as a condition of criminal sentencing, there is an expectation that many incarcerated people will perform labor – oftentimes for as little as 8 cents an hour, or no wages at all.

   "The psychological effects of modern-day slavery and involuntary servitude are well documented. The lack of personal choice inherent in both conditions can lead to a diminished sense of self, as well as issues with autonomy, self-efficacy, and ability to relate to and trust others. Today, 12 states prohibit enslavement and involuntary servitude, but exception provisions for criminal punishment remain; only 9 states permit involuntary servitude as a criminal punishment – California being one of them.

   "Dissolving the remnants of slavery and racial inequality is more important now than ever before. In 2018, Colorado passed a ballot measure that removed slavery and involuntary servitude as a criminal punishment from its state Constitution. That same year, U.S. Senator Merkley (Oregon) introduced a resolution to remove involuntary servitude as a punishment for crime from the U.S. Constitution."

8) **Related Legislation**: AB 1003 (Gonzalez) would create a new offense for the intentional theft of wages by an employer, punishable as either a felony or a misdemeanor. AB 1003 is awaiting assignment in the Senate Rules Committee.

9) **Prior Legislation**:

   a) SCR 69 (Bradford), of the 2019-2020 Legislative Session, would have expressed the Legislature's support for fair and just wages for incarcerated persons working for the Prison Industry Authority, the Division of Juvenile Facilities, and CDCR. SCR 69 was never heard in the Assembly Public Safety Committee.

   b) AB 22 (Lieber), Chapter 240, Statutes of 2005, established the crime of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

Young Women's Freedom Center (Co-Sponsor)
ACLU California Action

All of Us or None Bakersfield
All of Us or None Oakland
All of Us or None Riverside
Asian Americans Advancing Justice - California
Asian Solidarity Collective
California Coalition for Women Prisoners
California Families Rise
California for Safety and Justice
California Lawyers for The Arts
California Nurses Association
California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Works
Courage California
Ella Baker Center for Human Rights
Fair Chance Project
Families United to End Life Without Parole
Felony Murder Elimination Project
Freedom United
Friends Committee on Legislation of California
Initiate Justice
Jewish Community Relations Council of San Francisco, the Peninsula, Marin, Sonoma, Alameda and Contra Costa Counties
Law Foundation of Silicon Valley
Legal Services for Prisoner With Children
National Action Network
National Association of Social Workers, California Chapter
Paws for Life K9 Rescue
Pillars of The Community
Prison Policy Initiative
Reuniting Families Contra Costa
Riverside Justice Table
San Bernardino Free Them All
San Francisco Board of Supervisors
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) San Diego
Starting Over, INC.
Surj Marin - Showing Up for Racial Justice
Surj North County San Diego (SURJNCSD)
Team Justice
Think Dignity
UC Berkeley's Underground Scholars Initiative (USI)
Uncommon Law
Uprise Theatre
We the People - San Diego
Women's Wisdom Art
Ywca Berkeley/Oakland

5 private individuals

Opposition

None

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

Date of Hearing: June 15, 2021
Counsel: Nikki Moore

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

SB 71 (McGuire) – As Introduced December 9, 2020

As Proposed To Be Amended In Committee

SUMMARY: Allows a court to permit a person to participate in an educational program as part of their community service to pay off the fine imposed for an infraction. This bill defines "educational program" to mean a program that "includes, but is not limited to, high school or General Education Development classes, college courses, adult literacy or English as a second language programs, and vocational education programs."

EXISTING LAW:

1) States that the court can permit a person convicted of an infraction to perform community service in lieu of a fine, upon showing that payment of the total fine would pose a hardship on the defendant or the defendant's family. (Pen. Code, § 1209.5, subd. (a).)

2) States that for the purpose of this section "total fine" refers to the total bail, including the base fine and all assessments, penalties, and additional moneys to be paid by the defendant. (Pen. Code, § 1209.5, subd. (b).)

3) States that the applicable community service's hourly rate is double the minimum wage set for the applicable calendar year, based on the schedule for an employer who employs 25 or fewer employees as defined in the Labor Code. (Pen. Code, § 1209.5, subd. (c)(1).)

4) States that a court may by local rule increase the amount that is credited for each hour of community service performed to exceed the hourly rate. (Pen. Code, § 1209.5, subd. (c)(1).)

5) Provides that, in addition to any other penalty in infraction, misdemeanor, or felony cases, the court may impose a civil assessment of up to $300 against a defendant who fails, after notice and without good cause, to appear in court for proceeding authorized by law or who fails to pay all or any portion of a fine ordered by the court or to pay an installment of bail. This assessment shall be deposited in the Trial Court Trust fund. (Pen. Code, § 1214.1, subd. (a).)

6) Provides that payment of bail, fines, penalties, fees, or a civil assessment shall not be required to schedule a court hearing on a pending underlying charge. (Pen. Code, § 1241.1, subd. (b)(2).)

7) Provides that any county or court that operates a comprehensive collection program may deduct the costs of operating that program, excluding capital expenditures, from any revenues collected under that program. (Pen. Code, § 2463.007.)

8) Provides that a comprehension collection program is a separate and distinct revenue collection activity that meets the following criteria: the program identifies and collects amounts arising from delinquent court-ordered debt, whether or not a warrant has been issued against the alleged violator. (Pen. Code, §1463.007, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California's traffic fines and fees are some of the highest in America when you multiply the large number of add-on fees. This means that a traffic ticket that is meant to be $100—the base fine that the legislature originally imposed for the offense—automatically becomes $490, a price that many low income families are unable to pay.

   "Currently law allows judges to provide alternative payment options of individuals who would face financial hardship in paying the mandated traffic fees. Options may include paying in installments or completing community service hours in lieu of the total fine.

   "The community service alternative offers middle-to-low income families the opportunity to satisfy their financial obligation to the court by working a number of unpaid hours for a qualifying nonprofit organization or a government agency as provided by the court. Community service duties may consist of performing manual labor (cleaning, raking, trash clean-up, etc.).

   "The community service alternative, which is intended to aide struggling families, can become inaccessible and overwhelming when the assigned hours are steep for completion. For low-income households, completing the community service hour requirement can become a hindrance to maintain employment, attend school and/or care for family.

   "SB 71 will address the issue of inaccessibility to the community service option by authorizing judges to offer educational programs as an alternative to serving community service. Offering educational programs as an option for community service will benefit tens of thousands of Californians and encourage individuals to seek opportunities that can have long lasting benefits to working families, such as training that will help residents achieve greater skills, which will help them secure a new or improved job or career. Having these skills will further expand the earning potential, which will benefit their families and our communities. SB 71 will additionally help disadvantaged communities fulfill financial obligations to the court by expanding community service options that will offer access to valuable education opportunities."

2) **Infraction Offenses in California**: Although infraction offenses are established in the Penal Code, they are substantially less serious than a felony or a misdemeanor. Infraction offenses do not subject a person to imprisonment or probation. The most common infractions are

traffic tickets, such as speeding or making an unsafe lane change. Other offenses, such as "disturbing the peace" – Penal Code Section 415 – can be charged as either an infraction or a misdemeanor.

Instead of being punished by incarceration or probation, persons who have committed infraction offenses are required to pay a fine. In some cases, where a person demonstrates an inability to pay a fine, the court may allow community service to be performed instead. In such cases, the court will often provide a list of organizations with whom the community service may be completed in order to satisfy the community service obligation.

3) **Arguments in Support**: According to the *Judicial Council of California*, "The Judicial Council supports SB 71 because it allows courts to provide individuals with the ability to utilize their participation in an educational program to address their infraction offense in lieu of paying fines, fees, and penalties. Additionally, we appreciate the committee's work to ensure the bill preserves judicial discretion to determine what educational programs are appropriate as well as the means that individuals can use to indicate they have completed their course work."

According to the *California Public Defenders Association*, "SB 71 is especially important for those with limited incomes, the communities most often served by Public Defenders. The fines that come with a traffic ticket or some other minor infraction can put an enormous strain on someone who is not working or is getting by paycheck to paycheck. Having alternatives to the fine could allow a person in that situation to pay their rent or cover other essential expenses. Moreover, community service could arguably provide more societal benefit than the payment of monetary fines, which can be difficult and costly to collect.

"SB 71 will alleviate financial burdens while redirecting efforts toward improving local communities. It is a reasonable reform that can have a significant impact."

4) **Prior Legislation**:

a) SB 164 (McGuire), Chapter 138, Statutes of 2019, established that a person convicted of an infraction who demonstrates that payment of a fine would pose a hardship and elects to perform community service in lieu of paying the fine, may perform that community service in the county in which the infraction occurred, the county of the person's residence, or any other county to which the person has substantial ties, including employment, family, or education.

b) SB 1233 (McGuire), of the 2017-2018 Legislative Session, would have authorized a person convicted of an infraction, a misdemeanor for failure to appear or pay bail for specified violations, or who has suffered a civil assessment for failure to appear, to perform community service in the defendant's county of residence in lieu of part or all of the fine or assessment imposed by participating in specified educational programs. SB 1233 died in the Senate Appropriations Committee.

c) SB 185 (McGuire), of the 2017-2018 Legislative Session, would have required a court to determine a defendant's ability to pay traffic violations and make specified accommodations if it determined the defendant to be indigent. SB 185 died in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Alameda County Public Defender's Office
American Civil Liberties Union/northern California/Southern California/San Diego and Imperial Counties
California Attorneys for Criminal Justice
California Catholic Conference
California Civil Liberties Advocacy
California Public Defenders Association (CPDA)
Courage California
Delivering Innovation in Supportive Housing (DISH)
Ella Baker Center for Human Rights
Judicial Council of California
Legal Aid At Work
National Association of Social Workers, California Chapter
The Greenlining Institute
UCLA Labor Center
Women's Foundation California

Opposition

None

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

Amended Mock-up for 2021-2022 SB-71 (McGuire (S))

Mock-up based on Version Number 99 - Introduced 12/9/20
Submitted by: Nikki Moore, Assembly Public Safety

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

SECTION 1. Section 1209.5 of the Penal Code is amended to read:

1209.5. (a) Notwithstanding any other law, the court shall permit a person convicted of an infraction, upon a showing that payment of the total fine would pose a hardship on the defendant or the defendant's family, to elect to perform community service in lieu of the total fine that would otherwise be imposed.

(b) For purposes of this section, the term "total fine" means the total bail, including the base fine and all assessments, penalties, and additional moneys to be paid by the defendant.

(c) (1) For purposes of this section, the hourly rate applicable to community service performed pursuant to this section shall be double the minimum wage set for the applicable calendar year, based on the schedule for an employer who employs 25 or fewer employees, as established in paragraph (2) of subdivision (b) of Section 1182.12 of the Labor Code.

(2) Notwithstanding paragraph (1), a court may by local rule increase the amount that is credited for each hour of community service performed pursuant to this section, to exceed the hourly rate described in paragraph (1).

(d) (1) If the court determines that a person who has been convicted of an infraction has shown that payment of the total fine would pose a hardship pursuant to subdivision (a) and the person has elected to perform community service in lieu of paying the total fine, the person may elect to perform that community service in the county in which the infraction violation occurred, the county of the person's residence, or any other county to which the person has substantial ties, including, but not limited to, employment, family, or education ties.

(2) Regardless of the county in which the person elects to perform community service pursuant to paragraph (1), the court shall retain jurisdiction until the community service has been verified as complete.

(e) If the court determines that a person who has been convicted of an infraction has shown that payment of the total fine would pose a hardship pursuant to subdivision (a) and the person has

elected to perform community service in lieu of paying the total fine pursuant to subdivision (d), the court may, in its discretion, permit a person to participate in an educational program to satisfy community service hours.

(f) As used in this subdivision, an educational program includes, but is not limited to, high school or General Education Development classes, college courses, adult literacy or English as a second language programs, and vocational education programs.

Date of Hearing: June 15, 2021
Counsel: Sandy Uribe

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

SB 73 (Wiener) – As Introduced December 10, 2020

SUMMARY: Authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation could only be granted in the unusual case where the interests of justice would be served.

EXISTING LAW:

1) 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).)

2) Prohibits the granting of probation to any person who is convicted of violating the following drug crimes:

   a) Possession for sale of 14.25 grams or more of a substance containing heroin;

   b) Sale of, or offering to sell, 14.25 grams or more of a substance containing heroin;

   c) Possession for sale, sale, or offering to sell heroin, with one or more prior convictions for those offenses;

   d) Possession for sale of 14.25 grams or more of any salt or solution of phencyclidine (PCP), or any of its analogs or precursors;

   e) Transporting for sale, importing for sale, administering, or offering to transport for sale, import for sale, or administer, or attempt to import for sale or transport for sale, PCP or any of its analogs or precursors;

   f) Sale of, or offering to sell, PCP or any of its analogs or precursors;

   g) Manufacture of PCP or any of its analogs or precursors, as specified;

   h) Using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture or sell any specified controlled substance;

   i) Using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor be in possession of PCP for sale, sells, distributes, or transports PCP, or manufactures PCP or any of its analogs or precursors;

j) Possession of specified substances, with intent to manufacture PCP or any of its analogs; and,

k) Possession for sale, sale, or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for those offenses. (Pen. Code, § 1203.07. subd. (a).)

3) Requires the existence of any fact which makes the defendant ineligible for probation to be alleged in the charging document, and either admitted by the defendant or found to be true by the trier of fact. (Pen. Code, § 1203.07. subd. (b).)

4) Restricts the granting of probation, except in an unusual case where the interests of justice would be served, when a defendant is convicted of the following drug crimes:

a) Possession for sale or sale of a substance containing 28.5 grams or more of cocaine or cocaine base;

b) Possession for sale or sale of a substance containing 28.5 grams or more of methamphetamine;

c) Manufacture of specified controlled substances, except PCP;

d) Using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base, cocaine, or methamphetamine; and,

e) Manufacture or sale of methamphetamine, with one or more specified prior convictions involving methamphetamine. (Pen. Code, § 1203.073, subds. (a) & (b).)

5) Requires the existence of any fact which makes the defendant presumptively ineligible for probation to be alleged in the charging document, and either admitted by the defendant or found to be true by the trier of fact. (Pen. Code, § 1203.073. subd. (d).)

6) Prohibits the granting of probation to any person convicted of specified drug offenses if the person has a prior felony conviction for possession of a controlled substance. (Health & Saf. Code, § 11370, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Senate Bill 73 will repeal mandatory minimum sentences for persons convicted of specified nonviolent drug offenses and provides judges with the discretion to grant probation. Mandatory minimums contribute to the crisis of mass incarceration, which costs California billions of dollars each year that the state should be investing in schools, infrastructure, healthcare, and other nonprofits to make our communities and economy stronger. These harsh mandatory minimums are rooted in the racist war on drugs era, which has been disproportionately waged against Black and Latinx people. Imposing mandatory minimum sentences, for nonviolent drug crimes, tie the hands of judges and force them to incarcerate individuals, even when judges believe people would

be better treated and supervised in their community. Evidence shows that mandatory minimum sentences for drug crimes do not improve public safety or reduce drug use or sales, but instead exacerbate existing racial disparities in our criminal justice system and disproportionately affect those suffering from mental illness. California has an urgent need to reduce our incarcerated population, especially in the era of COVID-19. SB 73 is an incremental reform that will return discretion to the courts and will provide our criminal justice system with alternatives to mass incarceration. This bill does not eliminate the upper penalties for these offenses or affect sentencing enhancements."

2) **Probation Eligibility**: Probation is the suspension of the imposition or the execution of a criminal sentence and the order of conditional release to the community. (Pen. Code, § 1203, subd. (a).)

As a general rule, most felony and misdemeanor cases are eligible for probation. However, a number of statutes prohibit the granting of probation for certain crimes or offenders. (See e.g., Pen. Code, §§ 1203.06 [certain violent felonies]; 1203.065 [certain sex offenses]; 1203.07 [certain drug offenses]; 1203.075 [specified crimes when defendant inflicts great bodily injury].) The existence of the fact which makes the defendant ineligible for probation must be alleged in the accusatory pleading and either admitted by the defendant in open court, or found to be true by the jury or judge. (*People v. Lo Cicero* (1969) 71 Cal.2d 1186, 1192-1193.)

There are other circumstances and enumerated offenses which are presumptively ineligible for probation and for which probation may be granted only in unusual circumstances where the interests of justice would best be served if the person is granted probation. Some examples include use of a weapon during the commission of a crime (Pen. Code, 1203, subd. (e)(2)); infliction of great bodily injury during the commission of the offense crime (Pen. Code, 1203, subd. (e)(3)); defendants previously convicted of two or more felonies (Pen. Code, 1203, subd. (e)(4)); theft cases involving over $100,000 (Pen. Code, § 1203.045); using, soliciting, or encouraging a minor to commit a felony (Pen. Code, § 1203.046); and certain drug offenses (Pen. Code, § 1203.073). In such instances, the defendant bears the burden of demonstrating that his or her case is the unusual case in which justice would be served by a granting of probation.

The Rules of Court list certain factors that may indicate the existence of unusual circumstances warranting probation eligibility for such offenses. Specifically, the court may consider whether the factor giving rise to the probation limitation is less serious than typically present coupled with the defendant's lack of similar criminal history. (Cal. Rules of Court, rule 4.413(c)(1)(A).) The court may also consider whether the current offense is less serious than a prior conviction which is the basis for the probation limitation, coupled with the defendant remaining free from incarceration for a substantial time before the present offense. (Cal. Rules of Court, rule 4.413(c)(1)(B).) Finally, the court may also consider factors not amounting to a defense, but reducing culpability, including: (1) that the defendant participated in the crime under provocation, coercion or duress and does not have a recent record involving crimes of violence; (2) that the defendant committed the crime because of a mental condition and there is a likelihood that he or she would respond to treatment that would be required as a condition of probation. (Cal. Rules of Court, rule 4.413(c)(2).) The trial court may, but is not required to, find the case unusual if the relevant criteria is met. (*People v. Cattaneo* (1990) 217 Cal.App.3d 1577, 1587.) In this respect, the court has broad

discretion and its decision will only be overturned if there was an abuse of discretion. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.)[1]

This bill would allow a court to grant probation for controlled substance offenses that are currently either ineligible or presumptively-ineligible for probation, except in those cases in which a person uses, solicits, induces, encourages, or intimidates a minor to act as an agent to manufacture or sell controlled substances. In cases involving the use of minors, a defendant remains presumptively ineligible for probation, except in the unusual case where the interests of justice would best be served. If the court were to grant probation in such a cases, the circumstances supporting the finding must be stated on the record and entered into the minutes.

3) **Argument in Support**: According to the Drug Policy Alliance, the sponsor of this bill, "This legislation will grant judges appropriate discretion in sentencing for specified nonviolent drug offenses.

"SB 73 will not change the upper penalty for any offense, but will provide judges the discretion to grant probation or to suspend a sentence in the interests of justice, and consistent with local values and local resources. Current state law ties the hands of judges, prohibiting them from ordering probation or suspending a sentence for a person convicted of nonviolent drug offenses, including possessing or agreeing to sell or transport opiates or opium derivatives, possessing or transporting cannabis, planting or cultivating peyote, and various crimes relating to forging or altering prescriptions, if the person has previously been convicted of any one of an expansive list of drug felonies. Existing law also prohibits judges from granting probation or suspending a sentence for persons convicted of specified nonviolent drug offenses, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, even if it is their first offense.

"Precluding probation eligibility for these offenses requires a mandatory term of incarceration ranging from two to seven or more years depending on the offense. By allowing judges the discretion to grant probation, this bill reflects the growing bipartisan consensus that mandatory minimum sentencing has failed to protect or enhance public safety, and robbed judges of their traditional and appropriate role in weighing the facts of each case before imposing a sentence. There is ample evidence that long sentences and mandatory minimums have had no effect on the availability, cost or potency of controlled substances. Controlled substances are cheaper, stronger and more widely available than in any time in our nation's history....

"SB 73 by Senator Wiener is an incremental step away from a costly, failed, and racist policy of locking up low-level nonviolent drug offenders for long periods of time. A fair and impartial criminal justice system, like all forms of good government, needs checks and balances. While prosecutors have charging discretion, the final say over a person's sentence must come from independent judges who have no personal or institutional stake in the

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[1] After the trial court determines that the presumption against probation is overcome, it then must evaluate whether or not to grant probation using the suitability factors listed in the Rules of Court. (See Cal. Rules of Court, rule 4.414.)

outcome of a case other than to ensure justice is done and rights are respected."

4) **Argument in Opposition**: According to the *California Police Chiefs Association*, "SB 73 would allow a judge the discretion to grant probation or to suspend a sentence for a person convicted of drug offenses, included but not limited to, possession or agreement to sell or transport opiates or cannabis, forging or altering prescriptions, possessing or selling a substance containing heroin, PCP or any of its analogs and more.

"The bill goes further, allowing a court to grant probation in an unusual case where the interests of justice would be served, for possessing or selling substances containing 28.5 grams or more of cocaine or methamphetamine, in a case involving a minor to act as an agent to manufacture or sell controlled substances, and the bill disregards previous drug-related offenses for these sentencing purposes as well.

"SB 73 sets a dangerous precedent in California court of law, and would jeopardize the health and safety of the communities we are sworn to protect."

5) **Related Legislation**:

a) AB 1542 (McCarty) authorizes Yolo County to offer a pilot program, known as the Secured Residential Treatment Program (SRTP), for individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated felony crimes. As part of the program, prohibits the court from placing a defendant on probation for the underlying offense, but requires, for the period in which an individual is participating in the pilot program, the individual shall be on supervision with the probation department. AB 1542 is pending referral by the Senate Rules Committee.

b) AB 1351 (Petri-Norris) imposes an additional enhancement when a person is convicted of specified drug offenses involving fentanyl. The hearing for AB 1351 in the Assembly Public Safety Committee was cancelled at the request of the author.

c) SB 75 (Bates) adds fentanyl to the list of drugs eligible for purposes of an enhancement for drug sales based on the weight of the controlled substance. The hearing for SB 75 in the Senate Public Safety Committee was cancelled at the request of the author.

6) **Prior Legislation**:

a) SB 378 (Wiener), of the 2019-2020 Legislative Session, was identical to this bill. SB 378 was held in the Assembly Rules Committee.

b) AB 607 (Carrillo), of the 2019-2020 Legislative Session, would have allowed a court to grant probation for controlled substance offenses that are currently either ineligible or presumptively ineligible for probation, except in those cases in which a minor was used as an agent. AB 607 was held in the Senate Appropriations Committee.

c) SB 1025 (Skinner), of the 2017-2018 Legislative Session, would have authorized the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor was used as an agent, in which case probation would remain prohibited. SB 1025 was not taken up on

the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
ACLU California Action
Asian Solidarity Collective
California Association of Alcohol and Drug Program Executives, INC.
California Attorneys for Criminal Justice
California for Safety and Justice
California Public Defenders Association (CPDA)
California Religious Action Center of Reform Judaism
Ella Baker Center for Human Rights
Essie Justice Group
Famm
Fresno Barrios Unidos
Friends Committee on Legislation of California
Initiate Justice
League of Women Voters of California
Los Angeles County District Attorney's Office
Mayor of City & County of San Francisco London Breed
Pillars of The Community
Prosecutors Alliance California
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County San Diego
Smart Justice California
Team Justice
Think Dignity
Uprise Theatre
We the People - San Diego

Oppose

California Association of Highway Patrolmen
California District Attorneys Association
California Family Council
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)

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

Date of Hearing: June 15, 2021
Counsel: Sandy Uribe

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

SB 81 (Skinner) – As Amended April 27, 2021

PULLED BY THE AUTHOR

Date of Hearing: June 15, 2021
Counsel: Cheryl Anderson

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

SB 383 (Cortese) – As Amended March 11, 2021

SUMMARY: Authorizes a court receiving a juvenile transfer case to determine whether an eligible minor is suitable for deferred entry of judgment (a post-adjudication, pre-disposition diversion program) if the transferring court did not do so and expands the circumstances under which a minor is eligible for informal supervision (a pre-adjudication diversion program). Specifically, **this bill**:

1) Removes the restrictions making minors presumptively ineligible for informal supervision if they are alleged to have sold or possessed for sale a controlled substance or are alleged to have committed a felony offense when they were at least 14 years of age.

2) Removes the requirement that in order for a court to grant informal supervision to presumptively ineligible minors, it must be an "unusual case" where the interests of justice would best be served. Requires instead that it simply be where the interests of justice would best be served.

3) Prohibits finding a minor ineligible for informal supervision or finding the minor has failed to comply with the terms of informal supervision where they are unable to pay victim restitution due to indigency.

4) Provides that if a minor is eligible for deferred entry of judgment (DEJ), but the minor resides in a different county where the case will be transferred, as described, the court may adjudicate the case without determining the minor's suitability for DEJ to enable the court in the minor's county of residence to make that determination.

5) Provides that if a minor is eligible for DEJ, but the court did not determine the minor's suitability for it, upon transfer of the case to the minor's county of residence, the receiving court may determine the minor's suitability before determining the disposition of the case and modify the transferring court's finding accordingly. Allows the receiving court to order a probation report regarding the minor's suitability for DEJ.

6) Removes the notice requirement pertaining to using a minor's failure to comply with the terms of DEJ as the basis for finding the minor unfit to be tried in juvenile court.

EXISTING LAW:

1) Subjects a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed murder or a specified serious sex offense, to the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 602.)

2) States that, in a case where the probation officer concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, they may delineate a specific program of informal supervision for the minor instead of filing a petition to declare the minor a ward of the court, if the minor and the minor's parent or guardian consent. Restricts a program of informal supervision to six months. (Welf. & Inst. Code, § 654, subd. (a).)

3) Provides that if a petition has been filed by the prosecuting attorney to declare a minor a ward of the court, the court may, without adjudging the minor a ward of the court and with the consent of the minor and the minor's parents or guardian, continue any hearing on a petition for six months and order the minor to participate in a program of informal supervision. (Welf. & Inst. Code, § 654.2, subd. (a).)

4) Excludes minors alleged to have committed certain offenses from participating in a program of informal supervision, except in the unusual case where the interest of justice would best be served and the court gives reasons on the record for its decision. Among minors presumptively excluded are those alleged to have sold or possessed for sale a controlled substance, those alleged to have committed a felony offense when they were at least 14 years of age, and those alleged to have committed an offense in which victim restitution exceeds $1,000. (Welf. & Inst. Code, § 654.3.)

5) Specifies the circumstances under which the juvenile court of one county is permitted to transfer a juvenile wardship proceeding to another county. Allows the court to transfer a case to the county where the minor's parents or legal guardians reside after the jurisdictional hearing. (Welf. & Inst. Code, § 750; Cal. Rules of Court, rule 5.610(c).)

6) Establishes a process for deferring the entry of judgment on a felony wardship petition. (Welf. & Inst. Code, §§ 790-795.)

7) Provides that a minor must meet the following requirements to be eligible for DEJ:

   a) The minor has not previously been declared a ward of the court for the commission of a felony offense;

   b) The offense charged is not a serious or violent felony, as specified;

   c) The minor has not previously been committed to the custody of the Division of Juvenile Justice;

   d) The minor's record does not indicate that probation has ever been revoked without being completed;

   e) The minor is at least 14 years of age at the time of the hearing;

   f) The minor is eligible for probation; and,

   g) The offense charged is not one of several specified sex offenses. (Welf. & Inst. Code, § 790, subd. (a).)

8) Requires the prosecuting attorney to review the file to determine whether or not the minor is eligible for DEJ. Requires, in the case of a minor found to be eligible for DEJ, the prosecuting attorney to file a declaration in writing with the court or state for the record the grounds upon which the determination is based. Requires the prosecuting attorney to make the minor's eligibility available to the minor and the minor's attorney. (Welf. & Inst. Code, § 790, subd. (b).)

9) Requires the prosecuting attorney's written notification to the minor to include all of the following:

   a) A full description of the procedures for DEJ;

   b) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in that process;

   c) A clear statement that, in lieu of jurisdictional and disposition hearings, the court may grant DEJ with respect to any offense charged in the petition, provided that the minor admits each allegation contained in the petition and waives time for the pronouncement of judgment, and that upon the successful completion of the terms of probation, the positive recommendation of the probation department, and the motion of the prosecuting attorney, but no sooner than 12 months and no later than 36 months from the date of the minor's referral to the program, the court is required dismiss the charge or charges against the minor;

   d) A clear statement that upon any failure of the minor to comply with the terms of probation, including the rules of any program the minor is directed to attend, or any circumstances, as specified, the prosecuting attorney or the probation department, or the court on its own, may make a motion to the court for entry of judgment and the court is then required to render a finding that the minor is a ward of the court for the offenses specified in the original petition and is required to schedule a dispositional hearing;

   e) An explanation of record retention and disposition resulting from participation in the DEJ program and the minor's rights relative to answering questions about the minor's arrest and DEJ following successful completion of the program; and,

   f) A statement that if the minor fails to comply with the terms of the program and judgment is entered, the offense may serve as a basis for a finding of unfitness to be tried in juvenile court if the minor commits two subsequent felony offenses. (Welf. & Inst. Code, § 791, subd. (a).)

10) Provides that the court may grant DEJ upon a finding that the minor is suitable for it and would benefit from education, treatment, and rehabilitation efforts. Requires the court to make suitability findings on the record where DEJ is granted. (Welf. & Inst. Code, § 790, subd. (b).)

11) Provides that if the minor consents and waives their right to a speedy jurisdictional hearing, the court may refer the case to the probation department or the court may summarily grant DEJ if the minor admits the charges in the petition and waives time for the pronouncement of

judgment. (Welf. & Inst. Code, § 791, subd. (b).)

12) Requires the probation department to make an investigation when directed by the court and take into consideration the defendant's age, maturity, educational background, family relationships, demonstrable motivation, treatment history, if any, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation. Requires the probation department to determine which programs would accept the minor and to report its findings and recommendations to the court. Requires the court to make the final determination regarding education, treatment, and rehabilitation of the minor. (Welf. & Inst. Code, § 791, subd. (b).)

13) Provides that a minor's admission of the charges contained in the petition shall not constitute a finding that a petition has been sustained for any purpose, unless a judgment is entered. (Welf. & Inst. Code, § 791, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

7) **Author's Statement**: According to the author, "At this time, if a youth is over 14 and charged with any felony a judge cannot consider Informal Supervision (I.S.), except in unusual cases where the court determines the interest of justice would be served by Informal Supervision. This means that if the charge is a first-time non-violent felony offense the judge must articulate facts that make the case eligible for I.S. This prevents the judge from offering a youth who made a first-time mistake to have the case handled informally, even if all parties were to agree. This bill enables a judge to offer I.S. in cases that involve a first-time offender arrested for or charged with a non-violent felony.

   "Currently when a youth commits a crime in another county and is later transferred into their county of residence, the county of residence is restricted from offering a deferred entry of judgment and any diversion services. Procedurally, the court in the county where the crime was committed must sustain a petition before transferring the youth and this petition cannot be un-sustained. Courts in one county may be unaware of the services offered in the youth's county of residence. This procedural restriction prevents the court in the county of residence from evaluating and offering these services, as if the youth had committed the crime in-county.

   "To address this disparity, this bill provides that once the youth is accepted as 'transferred in' by the county of residence, the court can consider eligibility for a deferred entry of judgment. If the court determines that the deferred entry of judgment is suitable, the youth's adjudication can be modified. Additionally, this bill allows a deferred entry of judgment suitability report to be written by the county's juvenile probation department for any non-violent felony transferred into the county. This prevents nonviolent youth, who take responsibility for a first offense, from unnecessarily entering the criminal justice system because of a procedural barrier."

8) **Informal Supervision (A Pre-Adjudication Diversion Program) Rather Than Wardship**: Juvenile delinquency actions are begun by the filing of a petition under Welfare and Institutions Code section 602. The petition alleges criminal offenses and is brought by the

district attorney.

But, the Welfare and Institutions Code provides an opportunity for pre-petition informal supervision, also known as diversion. (Welf. & Inst. Code, § 654.) If the probation officer concludes that the minor is within the juvenile court's jurisdiction, or likely soon will be, the officer can delineate a specific program of supervision for the minor for up to six months to try to adjust the situation that brings the minor within the juvenile court's jurisdiction. (Welf. & Inst. Code, § 654; *In re Adam R.* (1997) 57 Cal.App.4th 348.) After the filing of a petition, the court may also offer informal supervision. (Welf. & Inst. Code, § 654.2.)

Informal supervision is a voluntary contract between the probation officer, the minor, and the parents or guardians. If the juvenile successfully completes this program, the case is then closed. If the juvenile is unsuccessful at any time during the six-month period, the probation department may make a referral to the district attorney's office for a formal petition to the juvenile court. (Welf. & Inst. Code, § 654.) Importantly, the court cannot require a minor to admit the truth of the petition before granting informal supervision. (*In re Ricky J.* (2005) 128 Cal.App.4th 783.)

Under current law, a number of circumstances render a minor presumptively ineligible for informal supervision. (Welf. & Inst. Code, § 654.3.) These circumstances include where a minor is alleged to have sold or possessed for sale a controlled substance and where the minor is alleged to have committed a felony offense when they were at least 14 years of age. The latter was added by the Gang Violence and Juvenile Crime Prevention Act of 1998, approved as Proposition 21 at the March 7, 2000, statewide primary election. (Voter Information Guide for 2000, Primary (2000) text of Prop. 21, p. 125; http://repository.uchastings.edu/ca_ballot_props/1188.)

This bill would remove these two informal supervision exclusions. However, a minor would still be presumptively ineligible for informal supervision under several circumstances, including where it is alleged they committed a specified violent or serious felony offense or possessed a specified controlled substance at a school. (Welf. & Inst. Code, § 654.3, subds. (a) & (c).)

Under current law, a minor is also presumptively ineligible for informal supervision where the petition alleges that the minor has committed an offense in which victim restitution exceeds $1,000. This bill would specify that the minor's inability to pay restitution due to their indigency cannot be used as grounds for finding them ineligible for informal supervision or finding that they have failed to comply with the terms of informal supervision. This is consistent with current case law holding that informal probation may not be denied because the minor is unable to make restitution. (See *Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 750.)

Additionally, this bill would remove the requirement that it must be an "unusual case" in order to overcome a presumption of ineligibility for informal supervision. But the court would still have to find the interests of justice would best be served by a grant of informal supervision.

9) **Deferred Entry of Judgment (A Post-Adjudication, Pre-Disposition Diversion Program):** Unlike informal supervision, DEJ provides an informal juvenile court alternative

for first-time non-violent, felony offenders. With DEJ, the minor admits the allegations of the petition, in lieu of jurisdictional and dispositional hearings. Instead, entry of judgment is deferred and the minor is required to comply with certain conditions for a period of 12 to 36 months. If the minor complies, the charges in the petition are dismissed, the arrest is deemed never to have occurred, and the minor's juvenile record is sealed. (See Welf. & Inst. Code, §§ 790-794.)

According to the author, the current DEJ process does not adequately address the situation where a juvenile case is transferred between counties. A wardship petition is generally filed in the county where the offense was committed. However, the minor may reside in a different county. Only after the jurisdictional hearing may the court transfer a juvenile case to the county where the minor resides. (Welf. & Inst. Code, § 750; Cal. Rules of Court, rule 5.610(c).) This precludes the court that receives the transferred case from being able to grant DEJ.

This bill would resolve this issue by, in the case of a transfer, allowing the juvenile court to adjudicate the case without determining an eligible minor's suitability for DEJ. The receiving court would then be authorized to make that determination prior to disposition of the case (sentencing), and modify the transferring court's finding accordingly. The receiving court would also be able to order the probation department to make an investigation and report of the minor's suitability for DEJ.

Additionally, current law, as added by Proposition 21, requires the prosecution to provide a minor with written notification that if they fail to successfully complete DEJ, the offense can be used as a basis for finding them unfit to be tried in juvenile court, if the minor commits two subsequent felony offenses. (See Voter Information Guide, *supra*, p. 130; Welf. & Inst. Code, § 791, subd. (a)(6).) This requirement references a subdivision that no longer exists – former Welfare and Institutions Code section 707, subdivision (d)) – and is related to the direct filing of juvenile cases by the prosecution in adult court. (Welf. & Inst. Code, § 791, subd. (a)(6).) On November 8, 2016, the voters approved Proposition 57, which repealed Welfare and Institutions Code section 707, former subdivision (d) (Prop. 57, § 4.2, as approved by voters, Gen. Elec. (Nov. 8, 2016), eff. Nov. 9, 2016) and now requires "a judge, not a prosecutor, to decide whether juveniles should be tried in adult court" (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 57, Public Safety and Rehabilitation Act of 2016, § 2, p. 141; see Welf. & Inst. Code, § 707, subd. (a)(1)).

This bill would remove the notice requirement pertaining to using the minor's failure to successfully complete DEJ as the basis for a finding of unfitness, along with its reference to former Welfare and Institutions Code section 707, subdivision (d).

10) **California Constitutional Limitations on Amending a Voter Initiative**: Because Proposition 21 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative

expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

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

As to the Legislature's authority to amend the initiative, Proposition 21 states: "The provisions of this measure shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." (See Voter Information Guide, *supra*, p. 131.)

This bill would amend statutory provisions added by Proposition 21 by: removing the provision making a minor presumptively ineligible for informal supervision if they are alleged to have committed a felony offense when they were at least 14 years of age; and removing the notice requirement regarding using a minor's failure to comply with the terms of DEJ as the basis of an unfitness finding. Pursuant to the above-referenced provisions of the California Constitution, Proposition 21 may be amended by a statute passed in each house by a 2/3 vote, or by a statute that becomes effective only when approved by the voters.

11) **Argument in Support**: According to the *Prosecutors Alliance of California*, "Under current law, if a youth is over the age of 14 and charged with any felony, a judge cannot consider informal supervision except in unusual cases. Additionally, when a youth commits a crime in another county and is later transferred into their county of residence, the county of residence is restricted from offering deferred entry of judgment and any diversion services.

"SB 383 will remove these barriers to youth rehabilitation by enabling a judge to offer informal supervision in cases that involve youth arrested for or charged for the first time with a nonviolent felony. It will also allow a youth's county of residence to conduct an analysis of the youth's needs and, if appropriate, offer deferred entry of judgment and any diversion services, as if the youth had committed the crime in-county. By increasing access to diversion for young people, SB 383 will promote rehabilitation and protect youth from more restrictive judicial interventions."

12) **Argument in Opposition**: None.

13) **Prior Legislation**:

a) Proposition 57, of the November 8, 2016 election, repealed the power of prosecutors to "direct file" youth into adult criminal court at district attorneys' sole discretion.

b) Proposition 21, of the March 7, 2000 election, enacted a number of public safety provisions, including a variety of increased penalties for crimes committed by youth –

e.g., eliminated informal probation for juveniles committing felonies except in unusual circumstances in the interest of justice.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians United for a Responsible Budget
Chief Probation Officers of California
Ella Baker Center for Human Rights
Initiate Justice
Los Angeles County District Attorney's Office
National Association of Social Workers, California Chapter
Pacific Juvenile Defender Center
Prosecutors Alliance of California
Santa Clara County Office of Education

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

Date of Hearing: June 15, 2021
Counsel: Matthew Fleming

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

SB 416 (Hueso) – As Amended May 20, 2021

As Proposed To Be Amended In Committee

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to offer college programs to specified inmates, subject to an appropriation by the Legislature. Specifically, **this bill**:

1) Requires CDCR to offer college programs to inmates with a general education development certificate or equivalent or a high school diploma and requires those college programs to only be provided by the California Community Colleges, the California State University, the University of California, or other regionally accredited, nonprofit colleges or universities in California.

2) Provides that priority to be given to colleges and universities that:

   a) Provide face-to-face, classroom-based instruction;

   b) Provide comprehensive in-person student supports, including counseling, advising, tutoring, and library services;

   c) Offer transferable degree-building pathways;

   d) Facilitate real-time student-to-student interaction and learning;

   e) Coordinate with other colleges and universities serving students in the department so that inmate students who are transferred to another institution can continue building toward a degree or credential;

   f) Coordinate with the California Community Colleges Rising Scholars Network, the California State University Project Rebound Consortium, the University of California Underground Scholars Initiative, or other nonprofit postsecondary programs specifically serving formerly incarcerated students so that incarcerated students who are paroled receive support to continue building toward a degree or credential;

   g) Do not charge incarcerated students or their families for tuition, course materials, or other educational components; and,

   h) Waive or offer grant aid to cover tuition, course materials, or other educational components for incarcerated students.

3) Provides that accredited postsecondary education providers shall be responsible for:

   a) Determining and developing curricula and degree pathways;

   b) Providing instructional staff and academic advising or counseling staff; and,

   c) Determining what specific services, including, but not limited to tutoring, academic counseling, library, and career advising, shall be offered to ensure incarcerated students can successfully complete their course of study.

4) Requires that an inmate enrolled in a full-time college program pursuant to these provisions, consisting of 12 semester units or the quarter equivalent in credit-bearing courses leading to an associate's degree or a bachelor's degree, shall be deemed by CDCR to be assigned to a full-time work or training assignment.

5) Defines "California regionally accredited, nonprofit colleges or universities," for purposes of these provisions, as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both and that are formed as nonprofit corporations in this state and that are regionally accredited by an agency recognized by the United States Department of Education.

6) Makes the requirement that CDCR offer college programs to specified inmates subject to an appropriation by the Legislature.

EXISTING LAW:

1) Requires CDCR to implement a literacy program in every state prison. (Pen. Code, § 2053.1, subd. (a).)

2) Requires CDCR to prepare an implementation plan for the literacy program, and request the necessary funds to implement it as follows:

   a) The department shall offer academic programming throughout an inmate's incarceration that shall focus on increasing the reading ability of an inmate to at least a 9th grade level;

   b) For an inmate reading at a 9th grade level or higher, the department shall focus on helping the inmate obtain a general education development certificate, or its equivalent, or a high school diploma;

   c) The department shall offer college programs through voluntary education programs or their equivalent; and,

   d) While the department shall offer education to target populations, priority shall be given to those with a criminogenic need for education, those who have a need based on their educational achievement level, or other factors as determined by the department. (Pen. Code, § 2053.1, subd. (a)(1) – (4).)

3) Requires CDCR to give strong consideration to the use of libraries and librarians, computer-assisted training, and other innovations that have proven to be effective in reducing illiteracy

among disadvantaged adults. (Pen. Code, § 2053.1, subd. (b).)

4) Requires CDCR to determine and implement a system of incentives to increase inmate participation in, and completion of, academic and vocational education, consistent with the inmate's educational needs, including, but not limited to, a specified literacy level, a high school diploma or equivalent, completion of a community college or four-year academic degree, or a particular vocational job skill. (Pen. Code, § 2053.2.)

5) Requires the Secretary of CDCR to appoint a Superintendent of Correctional Education, who shall oversee and administer all prison education programs. (Pen. Code, § 2053.4.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "This bill seeks to protect California's most vulnerable college student populations and ultimately implement two important safeguards in the Penal Code. First, this bill would ensure incarcerated students have access to face-to-face college instruction only provided by qualified, regionally non-profit higher education providers. In 2020, Federal administration granted incarcerated individuals the access to Pell Grants, which is a critical step in establishing equitable access to higher education. However, the extension of Pell Grant eligibility to incarcerated students has already greatly increased outreach to CDCR, particularly from for-profits seeking Pell Grant funding, potentially leaving these students to accrue courses with non-applicable or non-transferrable degree credits. Making this amendment to the Penal Code reassures that only programs that have the resources to support incarcerated students' needs would be allowed to teach in California state prisons. Second, this bill would amend Title 15 in the Penal Code to recognize full-time enrollment in college as a full-time assignment. Our current laws demonstrate interest in providing general education for incarcerated individuals. However, the current regulations do not address the importance of education as a quality factor in reducing recidivism and increasing the odds of finding employment upon release."

2) **Post-Secondary Education at CDCR Facilities**: According to the CDCR website, "Post-secondary education courses include college-level coursework offered to students through the Post-Secondary and Continuing Education Program. The Office of Correctional Education of the Division of Rehabilitative Programs in collaboration with various community colleges and partnership with the California Community College Chancellor's Office, offers students opportunities to enroll in college courses that are nationally or regionally accredited by the United States Department of Education. Courses may be available via face-to-face instruction or correspondence coursework from accredited agencies.

"Currently, various community colleges provide face-to-face college courses in 34 institutions. These college courses are non-remedial and lead to a degree in accordance with the Memorandum of Understanding established between the California Department of Corrections and Rehabilitation (CDCR) and the California Community College serving in that geographical location. College courses are also provided to students via correspondence program by 25+ different colleges." (https://www.cdcr.ca.gov/rehabilitation/pse/, [as of June 4, 2021].)

3) **The Need for this Bill**: Providing higher education opportunities to inmates is a policy idea that has been gaining bipartisan momentum nationwide. (Nadworny, *Congress Considers Making College More Accessible To People In Prison*, NPR, April 20, 2019, available at: https://www.npr.org/2019/04/20/713874091/congress-considers-making-college-more-accessible-to-people-in-prison, [as of June 7, 2021].) The policy has been pushed as a means to curb the country's high recidivism rates. (*Id.*) A recent research paper published by the RAND Corporation examined the efficacy of higher education programs within penal institutions in the United States. (Davis, *Higher Education Programs in Prison: What we Know Now and What We Should Focus on Going Forward*, RAND Corp., August 2019, available at: https://www.rand.org/pubs/perspectives/PE342.html, [as of June 4, 2021].) Among the paper's conclusions was that there is "solid evidence showing that correctional education programs are effective—and cost-effective—at improving employment outcomes for participants and at helping to keep formerly incarcerated individuals from returning to prison," and that "education is another lever that policy-makers can use to help reduce recidivism rates." (*Id.* at 12.) The paper also cited California as a promising example for how to provide, and fund, higher education programs for incarcerated persons. (*Id.* at 9 – 10.)

   This bill seeks to expand and improve the existing opportunities for post-secondary education in CDCR facilities. It would require CDCR to offer college programs provided by the California Community Colleges, the CSU, the UC, or other regionally accredited, nonprofit colleges or universities to inmates who have earned a GED certificate or a high school diploma. It also requires CDCR to prioritize partnerships with colleges and universities that provide face-to-face instruction, offer transferable degree-building pathways, and do not charge incarcerated students or their families for tuition or course materials, among other things. This bill also establishes the responsibilities for college education providers, including determining and developing curricula and degree pathways as well as providing instructional staff and academic advising or counseling staff. Finally, this bill requires CDCR, by regulation, to assign an inmate enrolled in a full-time college program to a full-time work or training assignment.

   As originally drafted, the provision of this bill pertaining to full-time work or training assignments was somewhat confusing. The committee has proposed an amendment to clarify that full-time college education should be considered by CDCR to be a full time work or training assignment, thereby giving postsecondary education equal prioritization with other work and training assignments.

   This bill has also been referred to the Assembly Higher Education Committee. Additional analysis will be performed by that committee.

4) **Argument in Support**: According to *Californians for Safety and Justice*: "Higher education in prison reduces recidivism and increases the odds of finding employment. Furthermore, face-to-face classes develop critical thinking skills and build prosocial peer-to-peer and peer-to-faculty relationships that foster success on the outside. Before COVID, more than half of the incarcerated college students were in face-to-face classes with fellow students. However, incarcerated students are threatened with solely receiving correspondence, which is contrary to the positive research benefits from face-to-face courses. SB 416 seeks to amend the current Penal Code to protect incarcerated students from becoming prey to for-profit institutions that promise degrees or credits as an attempt to

access Pell Grants. Many for-profit institutions have offered courses to incarcerated students with credits that do not transfer to a 4-year institution or offer translatable skills for jobs upon release. In addition, SB 416 seeks to prioritize degree-track education as an assignment within prisons, ultimately allowing incarcerated students to focus on their courses and studies.

"California now has the opportunity to lead the nation on advancements in educational opportunities for the incarcerated students. Passing SB 416 not only aligns with the State's investment in higher education but also protects students no matter where they are engaging in their studies. This is a critical step in which will reduce recidivism and therefore will revitalize the state."

5) **Prior Legislation**:

a) SB 343 (Hancock) Chapter 798, Statutes of 2015, required CDCR to strongly consider the use of libraries and librarians in its literacy programs.

b) SB 1391 (Hancock), Chapter 695, Statutes of 2014, allowed California Community Colleges to receive full funding for credit-course instruction offered in correctional institutions and sought to expand the offering of such courses.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Anti-recidivism Coalition
Bay Area Regional Health Inequities Initiative
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Community Colleges, Chancellor's Office
California for Safety and Justice
California Public Defenders Association (CPDA)
Campaign for College Opportunity
Center for Employment Opportunities
Center for Responsible Lending
Church State Council
Courage California
Criminal Justice Clinic, UC Irvine School of Law
Defy Ventures
Drug Policy Alliance
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Fair Chance Project
Foundation for California Community Colleges
Fresno Barrios Unidos
Initiate Justice
Justice Education Initiative

Legal Services for Prisoners With Children
Leveraging Inspiring Futures Through Educational Degrees
Michelson Center for Public Policy
National Association of Social Workers, California Chapter
Project Rebound Consortium
Re:store Justice
Riverside Community College District
Root & Rebound
San Francisco Public Defender
San Jose-evergreen Community College District
Success Stories
The Transformative In-prison Workgroup
UC Berkeley's Underground Scholars Initiative (USI)
Underground Scholars Initiative
Villines Group, LLC
Women's Foundation of California
Youth Alliance

Opposition

None

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

Amended Mock-up for 2021-2022 SB-416 (Hueso (S))

Mock-up based on Version Number 97 - Amended Senate 5/20/21
Submitted by: Matthew Fleming, Assembly Public Safety Committee

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

SECTION 1. Section 2053.1 of the Penal Code is amended to read:

2053.1. (a) The Secretary of the Department of Corrections and Rehabilitation shall implement in every state prison literacy programs that are designed to ensure that upon parole inmates are able to achieve the goals contained in this section. The department shall prepare an implementation plan for this program, and shall request the necessary funds to implement this program as follows:

(1) The department shall offer academic programming throughout an inmate's incarceration that shall focus on increasing the reading ability of an inmate to at least a 9th grade level.

(2) For an inmate reading at a 9th grade level or higher, the department shall focus on helping the inmate obtain a general education development certificate, or its equivalent, or a high school diploma.

(3) (A) (i) For an inmate with a general education development certificate or equivalent or a high school diploma, the department shall offer college programs. The college programs shall only be provided by the California Community Colleges, the California State University, the University of California, or other California regionally accredited, nonprofit colleges or universities.

(ii) For the purposes of this subparagraph, "California regionally accredited, nonprofit colleges or universities" means nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both and that are formed as nonprofit corporations in this state and that are regionally accredited by an agency recognized by the United States Department of Education.

(B) Priority shall be given to colleges and universities that:

(i) Provide face-to-face, classroom-based instruction.

(ii) Provide comprehensive in-person student supports, including counseling, advising, tutoring, and library services.

(iii) Offer transferable degree-building pathways.

(iv) Facilitate real-time student-to-student interaction and learning.

(v) Coordinate with other colleges and universities serving students in the department so that inmate students who are transferred to another institution can continue building toward a degree or credential.

(vi) Coordinate with the California Community Colleges Rising Scholars Network, the California State University Project Rebound Consortium, the University of California Underground Scholars Initiative, or other nonprofit postsecondary programs specifically serving formerly incarcerated students so that incarcerated students who are paroled receive support to continue building toward a degree or credential.

(vii) Do not charge incarcerated students or their families for tuition, course materials, or other educational components.

(viii) Waive or offer grant aid to cover tuition, course materials, or other educational components for incarcerated students.

(C) Accredited postsecondary education providers shall be responsible for:

(i) Determining and developing curricula and degree pathways.

(ii) Providing instructional staff and academic advising or counseling staff.

(iii) Determining what specific services, including, but not limited to tutoring, academic counseling, library, and career advising, shall be offered to ensure incarcerated students can successfully complete their course of study.

(D) ~~The department shall, by regulation, assign an inmate enrolled in a full-time college program pursuant to this section, consisting of 12 semester units or the quarter equivalent in credit-bearing courses leading to an associate's degree or a bachelor's degree, a full-time work or training assignment.~~

An inmate who is enrolled, pursuant to this section, in a full-time college program consisting of 12 semester units, or the quarter equivalent thereof, of credit-bearing courses leading to an associate's degree or a bachelor's degree shall be deemed by the department to be assigned to a full-time work or training assignment.

(4) While the department shall offer education to target populations, priority shall be given to those with a criminogenic need for education, those who have a need based on their educational achievement level, or other factors as determined by the department.

(b) In complying with the requirements of this section, the department shall give strong consideration to the use of libraries and librarians, computer-assisted training, and other innovations that have proven to be effective in reducing illiteracy among disadvantaged adults.

(c) The amendments made to paragraph (3) of subdivision (a) by the act that added this subdivision shall be implemented only upon an appropriation by the Legislature for these purposes in the annual Budget Act or other statute.

Date of Hearing: June 15, 2021
Counsel: Matthew Fleming

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

SB 494 (Dodd) – As Amended May 19, 2021

As Proposed To Be Amended In Committee

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to implement a course of instruction for the training of law enforcement officers in the use of advanced interpersonal communication skills, and requires a course in science-based interviewing to be included at the Robert Presley Institute of Criminal Investigation (ICI). Specifically, **this bill**:

1) Requires POST to develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers in advanced interpersonal communication skills and requires the course or courses to be included in the basic training for law enforcement officers.

2) Requires POST to develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers training to become detectives and criminal law enforcement investigators in ethical, science-based interviewing, and requires that course or courses to be incorporated into the core course required by the Robert Presley Institute of Criminal Investigation.

3) Requires POST to develop the courses of instruction, the learning and performance objectives, the standards for the training, and guidelines consistent with relevant peer-reviewed research in consultation with groups and individuals having an interest and expertise in the fields of interpersonal communication and science-based interviewing.

6) Requires the groups and individuals to include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public.

5) Requires POST, in consultation with these groups and individuals, to review existing training programs to determine how advanced interpersonal communication training, and science-based interviewing may be included as part of existing programs.

6) Requires each law enforcement agency to adopt and promulgate specific policies, and require regular and periodic training on advanced interpersonal communication training, and science-based interviewing.

7) Defines "advanced interpersonal communications skills" as the deliberate use of communication strategies to manage the dynamics of an interaction. Law enforcement officers should seek to employ skills with the specific intention of establishing rapport with the subject to create an atmosphere conducive to cooperation and engagement as appropriate

for the situation. When feasible, the skills should be based on empirical evidence of their effectiveness, and may include, but are not limited to active listening, reflection, non-judgmental approaches, evocation, empathy, and methods of non-confrontational challenge. Law enforcement officers should seek to determine the communication style and behavior of the subject and adapt their response accordingly.

8) Defines "science-based interviewing" as an interview process that is supported by empirical research and evaluated by scientific standards of reliability and validity. When feasible, the process should begin with an initial planning phase that is designed to assist the investigative team in separating facts from inferences, decrease the likelihood of errors based on cognitive biases, and decrease the likelihood of false confessions. The interviewer should seek to engage the subject in an ethical and professional manner, while understanding that the role of the interviewer is not simply to extract a confession, but rather to seek the truth about events to provide the best evidence in the interests of justice. Cues to deception should be found in the details of the story, rather than in signs of anxiety or nonverbal behaviors.

EXISTING LAW:

1) Requires all peace officers to complete an introductory course of training prescribed by the Commission on Peace Officers Standards and Training (POST), demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

2) States that satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. (Pen. Code, § 832, subd. (a).)

3) Specifies that a peace officer, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the training course. (Pen. Code, § 832, subd. (b).)

4) Requires any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department to successfully complete a course of training prescribed by POST before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. (Pen. Code § 832.3.)

5) Requires POST to establish the Robert Presley Institute of Criminal Investigation (ICI) which makes available to criminal investigators of California's law enforcement agencies an advanced training program to meet the needs of working investigators in specialty assignments, such as arson, auto theft, homicide, and narcotics. (Pen. Code § 13519.9, subd. (a).)

6) Requires ICI to provide an array of investigation training, including core instruction in matters common to all investigative activities, advanced instruction through foundation specialty courses in the various investigative specialties, and completion of a variety of elective courses pertaining to investigation. (Pen. Code § 13519.9, subd. (b).)

7) Requires every city police officer or deputy sheriff at a supervisory level who is assigned field or investigative duties to complete a high technology crimes and computer seizure

training course certified by POST within 18 months of assignment to supervisory duties. (Pen. Code § 13515.55.)

8) Requires POST to prepare and implement a course for the training of specialists in the investigation of sexual assault cases, child sexual exploitation cases, and child sexual abuse cases. Officers assigned to investigation duties which include the handling of cases involving the sexual exploitation or sexual abuse of children, shall successfully complete that training within six months of the date the assignment was made. (Pen. Code § 13516, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the Author, "SB 494 will help train law enforcement officers in their criminal investigations and public interactions, ensuring they uphold civil rights and treat people with dignity and respect. Everyone deserves to be treated fairly and humanely by police officers and should not fear having their rights trampled. Over the past 75 years, police have relied on a criminal interrogation strategy known as the Reid Technique, which relies heavily on assuming guilt, assessing behavioral clues of deception and administering psychological manipulation. Studies have raised serious questions about the validity of these techniques. A 2006 meta-analysis found the aptitude to correctly detect deception averaged only 54%. SB 494 would require the California Commission on Police Officer Standards and Training to create and integrate office training on interview techniques that are more ethical and effective at getting accurate information while avoiding false confessions."

2) **Interrogation and the "Reid Technique"**: The primary impetus for this bill is the use of "the Reid Technique of Interviewing and Interrogation" by law enforcement. The term "The Reid Technique of Interviewing and Interrogation" is a registered trademark of John E. Reid and Associates, Inc. According to Reid and Associates, over 500,000 law enforcement and security professionals have attended the company's interview and interrogation training programs since they were first offered in 1974. California courts have cited estimates that about two-thirds of police executives in the United States have had training in the Reid Technique. (*In Re Elias V.*, (2015) 237 Cal. App. 4th 568, 579.)

   The Reid technique is a method of investigative interviewing and interrogation. The technique consists of a three-phase process beginning with fact analysis, followed by behavior analysis, and, when appropriate, by the Reid nine steps of interrogation. (*Reid & Assocs. v. Netflix, Inc.*, (2020) U.S. Dist. LEXIS 51303, at *2, also available at: https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2019cv06781/369631/47/, [as pf June 8, 2021].) The technique prohibits the use of physical violence, promises of leniency, excessively long interrogations, and the denial of legal rights or physical needs, and urges extreme care and caution whenever the target is a juvenile. (*Id.* at *3). Courts have frequently admitted confessions that are produced by the Reid technique. (*Ibid.*) Courts have also refused to admit confessions produced by the Reid technique, depending on the circumstances. (*See Elias V.*, *supra*, 237 Cal. App. 4th at 586 – 87.)

   According to Reid Technique guidelines, individuals should be interrogated only when the information developed from the interview and investigation indicate that the subject is

involved in the commission of the crime. The nine steps of interrogation are as follows:

- Positive confrontation. Advise the suspect that the evidence has led the police to the individual as a suspect. Offer the person an early opportunity to explain why the offense took place.

- Theme development. The investigator then presents a moral justification (theme) for the offense, such as placing the moral blame on someone else or outside circumstances. The investigator presents the theme in a monologue and in sympathetic manner.

- Try to minimize the frequency of suspect denials.

- At this point, the accused will often give a reason why he or she did not or could not commit the crime. Try to use this to move towards the acknowledgement of what they did.

- Reinforce sincerity to ensure that the suspect is receptive.

- The suspect will become quieter and listen. Move the theme of the discussion toward offering alternatives. If the suspect cries at this point, infer guilt.

- Pose the "alternative question", giving two choices for what happened; one more socially acceptable than the other. The suspect is expected to choose the easier option but whichever alternative the suspect chooses, guilt is admitted. There is always a third option which is to maintain that they did not commit the crime.

- Lead the suspect to repeat the admission of guilt in front of witnesses and develop corroborating information to establish the validity of the confession.

- Document the suspect's admission or confession and have him or her prepare a recorded statement (audio, video or written).

The Reid technique has been subjected to substantial criticism. (*E.g.* Starr, *The Interview: Do police interrogation techniques produce false confessions?*, New Yorker Magazine, December 1, 2013, available at: https://www.newyorker.com/magazine/2013/12/09/the-interview-7, [as of June 8, 2021].) Critics of the technique assert that it is problematic in both its dominating style of interrogation, as well as the fallibility of police officers' ability to accurately detect truthfulness based on behavioral cues. (*Id.*; *see also* Hager, *The Seismic Change in Police Interrogations*, The Marshall Project, March 7, 2017, available at: https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations, [as of June 8, 2021].) As a result of these criticisms, some law enforcement consulting groups have decided to discontinue their teaching of the Reid Technique altogether. (Hager, *supra.*)

3) **Basic Training for Peace Officers**: The POST-certified Regular Basic Course (basic academy) is the training standard for police officers, deputy sheriffs, school district police officers, district attorney investigators, as well as a few other classifications of peace officers.

The basic academy includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction called Learning Domains. Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy. (POST website, https://post.ca.gov/peace-officer-basic-training.)

The basic academy is divided into 43 individual topics, called "Learning Domains." The Learning Domains contain the minimum required foundational information for given subjects. The training and testing specifications for a particular domain may also include information on required instructional activities and testing requirements. (*Id.*) The basic academy provides hands-on experience, including weapons training, role-play scenarios, patrol procedures, emergency vehicle operations, and arrest and control techniques. The student must pass written, exercise, scenario, and physical abilities tests, to demonstrate readiness for entry into a department's standardized field training program.

Professional and ethical interaction with members of the community is covered in the first Learning Domain, entitled "Leadership, Professionalism, and Ethics." Topics discussed in that domain include "the relationship between public trust and a peace officer's ability to perform their job," as well as the benefits of professional and ethical behavior to the community, agency and peace officer, and the consequences of unprofessional or unethical conduct. (*See* POST Regular Basic Course Training Specifications, Learning Domain 1, available at: https://post.ca.gov/regular-basic-course-training-specifications, [as of June 7, 2021].) In addition, some aspects of interviewing and interrogation are covered in Learning Domain 15, "Laws of Arrest." (*Id.*) It does not appear that the Reid Technique is taught in the basic course of training for law enforcement.

This bill would require POST to create a new training course on "advanced interpersonal communication skills." The bill would also require POST to solicit input for the training course from a group that includes, but is not limited to law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public. As originally drafted, the bill did not define that term. The committee has therefore suggested an amendment that would define the term based on materials provided by the author. Once developed, this course would be required to be taught as a part of the 664 hour course of basic training for law enforcement. Because this bill would require new material to be added to the 664 course, other material would necessarily be compressed or eliminated from the existing course. This bill does not specify an hour requirement for the new course that POST would be required to create and implement, so it is unclear how much existing material would have to be condensed or eliminated from the current course.

4) **Robert Presley Institute of Criminal Investigation (ICI)**: The ICI is POST's training institute for detectives and other criminal investigators. It was first contemplated in the mid to late 80's. It was officially established in statute in 1994 by AB 1329 (Epple) Chapter 43, Statutes of 1994. The ICI Program is presented in three phases and includes approximately 200 hours of training to qualify for an ICI Certificate in one of 16 specialty areas. The phases include an 80-hour Core Course, a Foundation Specialty Course, and three Investigative Electives. ICI courses are primarily open to all full-time, sworn Detectives/Investigators from California POST-affiliated law enforcement agencies. Patrol

officers who are pending an investigative assignment with their agency within 6 months may also attend the core ICI course. Other sworn and non-sworn law enforcement personnel may attend ICI courses on a space available basis by paying the full course costs.

According to POST, approximately 2,500 officers attend the ICI each year. POST has also indicated that although some aspects of the Reid Technique are taught within ICI, there have been recent efforts to reform the instruction of the technique in order to avoid the pitfalls that can lead to a false confession.

This bill would require POST to create and implement a course on ethical, science-based interviewing. The course would be required to be taught as part of the 80-hour core course taught at ICI. It would not eliminate instruction on the Reid Technique, but it would add additional guidance for detectives and investigators that would be focused on low-key, information gathering style of interviewing and interrogation, as opposed to highly confrontational interrogations that seek to overbear the will of the suspect. As originally drafted this bill did not define "science-based interviewing." The committee has therefore suggested an amendment that would define the term based on materials provided by the author.

5) **Arguments in Support**: According to the bill's sponsor, the *El Dorado District Attorney's Office*: "This bill would require POST to convene a working group comprised of law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public to review the available research and develop curriculum. Over the past 15 years, accusatorial interviewing has come under intense scrutiny, in part because it is based more on anecdote and tradition than on scientific research and increases the probability of false confessions. During the same period, researchers have published more than 100 pieces of peer-reviewed scientific literature in the field of interviewing and interrogations."

6) **Prior Legislation**:

   a) AB 332 (Skinner) Chapter 172, Statutes of 2019, required POST to submit a report to the Legislature and Governor with specified data relating to students' completion of the basic training course for peace officers and the availability of remedial training and retesting when a student fails to complete a course.

   b) AB 1329 (Epple) Chapter 43, Statutes of 1994 established the Robert Presley Institute of Criminal Investigation in statute.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California District Attorneys Association
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for The Innocent
El Dorado District Attorney
Merced County District Attorney's Office
Monterey County District Attorney's Office

Operational Sciences Institute
Orange County District Attorney
Plumas County District Attorney
San Mateo County District Attorney's Office
Santa Clara District Attorney
Santa Cruz County District Attorney's Office

3 private individuals

Oppose

None

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

Amended Mock-up for 2021-2022 SB-494 (Dodd (S))

Mock-up based on Version Number 98 - Amended Assembly 5/19/21
Submitted by: Matthew Fleming, 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) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.

(b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public.

(c) Beginning with the proliferation of physically abusive and aggressive tactics in the early 20th century, law enforcement agents employed what they deemed the most effective means for getting suspects to confess. In the early 1940s, harsh interrogation practices eventually gave way to less physically abusive, but more psychologically manipulative techniques. These tactics, later referred to as the Reid Technique, taught investigators how to detect lies and elicit confessions using an array of psychological strategies.

(d) Now more than 75 years old, the Reid Technique's dominance in the United States criminal-interrogation realm is pervasive and relies heavily on assuming guilt, assessing behavioral clues of deception, and administering psychological manipulation.

(e) Over the past 15 years, the Reid Technique has come under intense scrutiny in part because it is based more on anecdote and tradition than on scientific research.

(f) The architects of the Reid Technique have failed to produce empirical evidence supporting the validity of assessing behavior to determine culpability. A 2006 meta-analysis study found the aptitude to correctly detect deception, regardless of expertise, averaged only 54 percent.

(g) A compounding problem with relying on behavior to distinguish between truth and lies is twofold: interrogators often overestimate their ability to detect deception, which then intensifies

the accusatorial nature of the interview. These flawed interrogation tactics collectively increase the potential for false confessions.

(h) In 2009, at the direction of the Obama Administration, the United States government created the High-Value Detainee Interrogation Group (HIG) in response to the highly publicized post-9/11 interrogation tactics the United States used on terrorist suspects. The HIG is tasked with conducting research in the field of interviewing and interrogations to identify the most effective and ethical means to obtain information from suspects.

(i) Since the group's establishment, HIG-supported researchers have published more than 100 pieces of scientific literature in the field of interviewing and interrogations. The group has also provided instruction to multiple United States law enforcement and military institutions, including the Los Angeles Police Department, the Federal Law Enforcement Training Center, and the Air Force Office of Special Investigations, on the use of evidence-based methods of interviewing.

(j) The intent of this act is to identify and establish the minimum standards for policies and training regarding ethical science-based interviewing as well as ~~human engagement and~~ advanced interpersonal communication skills with respect for human rights, dignity, and life.

SEC. 2. Section 13519.11 is added to the Penal Code, to read:

13519.11. (a) (1) The commission shall develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers in ~~ethical human engagement and~~ advanced interpersonal communication skills.

(2) This course shall be incorporated into the course or courses of basic training for law enforcement officers.

(b) (1) The commission shall develop and implement, on or before January 1, 2023, a course or courses of instruction for the regular and periodic training of law enforcement officers training to become detectives and criminal law enforcement investigators in ethical science-based interviewing.

(2) This course shall be incorporated into the core course required by the Robert Presley Institute of Criminal Investigation.

(c) The commission shall develop the courses of instruction, the learning and performance objectives, the standards for the training, and guidelines consistent with relevant peer-reviewed research in consultation with groups and individuals having an interest and expertise in the fields of ~~human engagement~~ **interpersonal communication** and science-based interviewing. The groups and individuals shall include, but are not limited to, law enforcement agencies, police academy instructors, subject matter experts, prosecutors, and members of the public.

(d) The commission, in consultation with these groups and individuals, shall review existing training programs to determine how ~~ethical human engagement,~~ advanced interpersonal

communication training, and science-based interviewing may be included as part of existing programs.

(e) Each law enforcement agency shall adopt and promulgate specific policies, and require regular and periodic training on ~~ethical human engagement,~~ advanced interpersonal communication training~~,~~ and science-based interviewing.

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

(1) "Advanced interpersonal communication skills" are the deliberate use of communication strategies to manage the dynamics of an interaction. Law enforcement officers should seek to employ skills with the specific intention of establishing rapport with the subject to create an atmosphere conducive to cooperation and engagement as appropriate for the situation. When feasible, the skills should be based on empirical evidence of their effectiveness, and may include, but are not limited to active listening, reflection, non-judgmental approaches, evocation, empathy, and methods of non-confrontational challenge. Law enforcement officers should seek to determine the communication style and behavior of the subject and adapt their response accordingly.

(2) "Science-based interviewing" is an interview process that is supported by empirical research and evaluated by scientific standards of reliability and validity. When feasible, the process should begin with an initial planning phase that is designed to assist the investigative team in separating facts from inferences, decrease the likelihood of errors based on cognitive biases, and decrease the likelihood of false confessions. The interviewer should seek to engage the subject in an ethical and professional manner, while understanding that the role of the interviewer is not simply to extract a confession, but rather to seek the truth about events to provide the best evidence in the interests of justice. Cues to deception should be found in the details of the story, rather than in signs of anxiety or nonverbal behaviors.

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 15, 2021
Counsel: Nikki Moore

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

SB 629 (Roth) – As Introduced February 19, 2021

SUMMARY: Permits an inmate slated for release from custody of the California Department of Corrections and Rehabilitation ("CDCR") to obtain an original California identification card, and expands eligibility for an inmate to obtain a replacement identification card by allowing an inmate to have a DMV-sanctioned photo taken while in custody. Specifically, **this bill**:

1) Deletes the requirement that an inmate have a usable photo on file with DMV in order to obtain a replacement identification card.

2) Adds California residence as a requirement which make an inmate an "eligible inmate" meaning an inmate applying for an original or replacement identification card who meets all of the requirements.

3) Provides that if an inmate has not previously held a California driver's license or identification card, as required to be an "eligible inmate," the inmate may still qualify to get an original identification card if:

   a) The inmate has signed and verified their application for an identification card under the penalty of perjury;

   b) The inmate has a usable photo taken;

   c) The inmate has provided a legible print of their thumb or finger; and,

   d) The inmate has provided acceptable proof of all other information required for "eligible inmate" status, which is subject to verification by the Department of Motor Vehicles ("DMV").

4) Establishes the cost for an original, identification card or driver's license issued to an eligible inmate upon release from a state facility at eight dollars ($8) if both of the following are true:

   a) The inmate currently resides in a facility housing inmates under the control of the CDCR; and

   b) The inmate has provided the department, upon application, a verification of their eligibility as specified and contains the signature of an official from the state facility

EXISTING LAW:

1) Requires that CDCR and the DMV ensure that all eligible inmates released from state prison have a valid identification card. (Pen. Code, § 3007.05.)

2) Defines "eligible inmate" to mean an inmate who meets all of the following requirements (Pen. Code, § 3007.05, subd. (c).):

   a) The inmate has previously held a California driver's license or identification card;

   b) The inmate has a usable photo on file with the Department of Motor Vehicles that is not more than 10 years old;

   c) The inmate has no outstanding fees due for a prior California identification card; and,

   d) The inmate has provided, and the Department of Motor Vehicles has verified, all of the following information: the inmate's true full name, the inmate's date of birth, the inmate's social security number, and the inmate's legal presence in the United States.

3) Establishes an $8 fee for a replacement identification card issued to an eligible inmate upon release from a state or federal correctional facility or a county jail facility. (Veh. Code, § 14902, subd. (g).)

4) Defines "eligible inmate" to mean an inmate who meets all of the following requirements: the inmate previously held a California driver's license or identification card; the inmate has a usable photo on file with the department that is not more than 10 years old; the inmate has no outstanding fees due for a prior California identification card; the inmate has provided, and the department has verified, his or her true full name, date of birth, social security number, and legal presence in the United States; the inmate currently resides in a facility housing inmates under the control of the Department of Corrections and Rehabilitation, a federal correctional facility, or a county jail facility; the inmate has provided the department, upon application, a verification of his or her eligibility under this subdivision that meets all of the requirements. (Veh. Code, § 14902, subd. (g)(1-6).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Nearly every individual released from prison encounters extreme barriers to successful reentry. Limiting access to a valid form of identification only adds to those barriers. An ID is almost always required to apply for jobs, seek medical care, receive housing assistance, or open a bank account. SB 629 expands the California Identification Card (CAL-ID) program by removing barriers for state inmates to obtain a state identification card upon their release from state prison in order to improve access to vital state and federal benefits when reentering the community."

2) **Background:** According to the author, "Between July 2019 and June 2020, CDCR submitted 16,654 applications to the DMV for individuals that were both interested and eligible to receive a CAL-ID, and the DMV approved and issued over 13,500. Of those issued, 10,460

persons were released with an ID card and the remaining received their ID card through a parole agent for those under state parole supervision, or a probation officer for those under local post release community supervision. However, under existing law, incarcerated individuals housed in a CDCR institution that do not have a usable photo on file within the last 10 years with the DMV are automatically ineligible to participate in the CAL-ID program. During this same period, there were 4,120 individuals that were released from state prison without a valid ID because current law automatically made them ineligible for the CAL-ID program for not having a usable photo on file with the DMV that was taken within the last 10 years. Many of these individuals were elderly or served lengthy sentences, which presented even greater barriers to navigating the already complex network of social services and other available resources. As we continue to release inmates from our state prisons, too many of them are left stranded from these essential benefits.

"SB 629 addresses this discrepancy by eliminating the requirement that an inmate seeking a valid CAL-ID must have a useable photo on file with the DMV that is no more than 10 years old, allowing a new photo to be taken before an inmate is set to be released, and extending the reduced fee of $8 for inmates to also include original identification cards. These simple changes will have a substantial impact on increasing inmate participation in the CAL-ID program and improving access to fundamental services paramount to successful community reintegration."

3) **Providing Identification Cards to More Inmates**: Current law allows an inmate to obtain a replacement identification card while in CDCR custody. This bill would expand access to provide an inmate with an original identification card. Additionally, an inmate who does not have a viable photo on file with the DMV, meaning a photo taken within the last 10 years, is not currently eligible to obtain an identification card while in CDCR custody. This prevents people who have been incarcerated for long periods of time, or who did not obtain an identification card or driver's license prior to becoming incarcerated, from the benefits of obtaining an identification card. This bill would ensure than an inmate would be able to get a photograph that satisfies DMV's security requirements.

   To implement this bill, CDCR and DMV will be required to identify and utilize technology to obtain and transfer to DMV an acceptable photograph, and also finger print, of an inmate who requires a new photograph to become "eligible" for an identification card.

   Despite this bill's expansion, there still remains a population of inmates that would be unable to obtain an identification card while in CDCR custody, specifically if they cannot prove citizenship. While the Legislature gave undocumented individuals the right to obtain a driver's license (which is not a federally compliant license) with AB 60 (Alejo) Chapter 524, Statutes of 2013, the Legislature has not authorized the DMV to issue federally non-compliant identification cards without proof of citizenship. The Legislature may want to consider addressing this broader issue of providing identification cards to undocumented individuals, which would in turn allow undocumented inmates to obtain identification cards while in CDCR custody.

4) **Reduced Fee Expanded to Include Reduced Fee for an Original Identification Card**: Existing law permits an "eligible inmate" to obtain a replacement identification card at a reduced fee of eight dollars. This bill expands that reduced fee to an "eligible inmate" who obtains an original identification card.

5) **This Committee Approved More Expansive Legislation to Provide Driver's Licenses to Inmates**: In April, this committee approved AB 717 (Stone) with a 6-2 vote. AB 717 and SB 629 have similar goals — to provide more inmates with identification cards by the time they are released.

   Two key provisions included in AB 717 that are not in SB 629 are:

   a) *Allow an inmate to obtain a renewal or duplicate driver's license prior to release.*

      For example, AB 717 provides: "The Department of Corrections and Rehabilitation and the Department of Motor Vehicles shall make all reasonable efforts to ensure that all inmates released from state prison are released with a valid California identification card or a duplicate or renewal driver's license, unless an inmate willfully chooses to not obtain a California identification card or driver's license. Where a valid California identification card or driver's license is not obtained before release, the Department of Corrections and Rehabilitation shall provide the inmate with a photo prison identification card. It is the intent of the Legislature that only in rare cases would an inmate be released without a valid California identification card or driver's license."

      SB 629 does not address providing a driver's license to an inmate, which is a main component of AB 717.

   b) *Require CDCR to assist an inmate in obtaining documents to acquire an identification card or driver's license, and outline specific timelines for when CDCR should initiate assistance.*

      For example, AB 717 would require CDCR to "facilitate the process between the inmate and the agencies holding the documentation by providing the means and opportunity, including, but not limited to, any forms, fees, notary services, and mailing-related needs, to ensure the inmate obtains the required documentation as soon as possible."

      As far as timelines, AB 717 states, "As soon as an inmate is within 13 months of release, with written consent from the inmate, work with the Department of Motor Vehicles and provide the means and opportunity, including, but not limited to, any forms, photographs, and mailing-related needs, to ensure the inmate receives an original, renewal, or duplicate California identification card or driver's license at release. For an inmate serving a life sentence, begin this process as soon as the inmate is within 13 months of their minimum eligible parole date. Immediately begin this process for an inmate whose sentence is shortened to less than 13 months for any reason."

      AB 717 also provides that, "For an inmate serving a life sentence, begin this process as soon as the inmate is within 24 months of their minimum eligible parole date. Immediately begin this process for an inmate whose sentence is shortened to within 24 months of release for any reason."

      SB 629 does not include specified timelines, and the burden of gathering the information necessary to obtain an ID is on the inmate. Additionally, SB 629 includes no references to driver's licenses, focusing only on identification cards.

Should the Legislature consider amending this bill to include either of these amendments?

6) **Arguments in Support**:

a) According to *California Attorneys for Criminal Justice*, "This bill would make it easier for inmates released from state prison to get a valid identification card (ID).

"Having a valid ID card is important in any person's everyday life, and is especially crucial to a former inmate's successful reintegration into society. A photo ID is often needed to apply for jobs, register for community college classes, open a bank account, and much more. Under current law, CDCR is only required to ensure that a released inmate has an ID under certain circumstances, including if they previously held a state ID or driver's license, and if they have a photo on file with the DMV that is not more than 10 years old.

"SB 629 implements common sense reforms to ensure that more inmates receive an ID upon release. This bill removes the requirement that an inmate have previously held a driver's license or state ID in order to receive CDCR's help in getting a new ID. This bill also removes the requirement that the inmates DMV photo be no more than 10 years old, and requires a new photo to be taken if the one on file is not usable. CACJ believes that these changes will benefit former inmates across the state and aid proper reintegration into society."

b) According to the *California Public Defenders Association*, "SB 629 amends California Penal Code section 3007.5 by expanding the ability for individuals – upon release form state prison – to obtain a California driver's license or ID card. Previously, an individual qualified for the photo identification program only if the individual previously had a driver's license or identification card. Further, the individual was required to have had a photo on file with the DMV, which was not older than 10 years.

"SB 629 amends the program in two unique ways. First, SB 629 abolishes the 10-year rule for photos. Instead, the photo need only be useable and, where the photo is deemed unusable, the individual is entitled to have a new photo taken. Second, the bill allows an individual to apply for a driver's license or ID card even if the individual has not previously had a photo identification card or driver's license in the State of California.

"Despite the relatively minor changes made by SB 629, the bill will have a major positive impact. Photo identification is often necessary for employment, medical care, banking, and housing – things that are vital for reintegration into society. By eliminating the hurdles to obtaining photo identification, SB 629 will increase the likelihood that individuals who are released from prison will transition successfully. Ideally, this will decrease the chance that an individual will reoffend."

7) **Related Legislation**: AB 717 (Stone), would require CDCR and DMV to make all reasonable efforts to ensure that all inmates released from state prison are released with a valid California identification card or driver's license, and to provide these IDs for a reduced fee of eight dollars. AB 717 is currently pending in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 2308 (Stone) Chapter 607, Statutes of 2014, expanded the Cal-ID program in an attempt to ensure that all people being released from state prisons would be released with ID. To be eligible for program, a person must have previously held a California ID, have a recognizable photo on file with the DMV from within the last 10 years, possess a DMV-verifiable social security number, birth date, and proof of legal presence in the United States, and must not owe any fines or fees.

b) AB 2835 (Stone) of the 2019-2020 Legislative Session would have expanded the CAL-ID program to include original and renewal California IDs, Drivers Licenses, and Real-IDs. The bill was not set in Assembly Public Safety due to COVID-19 bill limitations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Corrections and Rehabilitation (Sponsor)
ACLU California Action
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association (CPDA)
Friends Committee on Legislation of California
Initiate Justice

Opposition

None

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