California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, June 27, 2023
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	SB 2	Portantino	Firearms.
2.	SB 46	Roth	Controlled substances: treatment.
3.	SB 58	Wiener	Controlled substances: decriminalization of certain hallucinogenic substances.
4.	SB 67	Seyarto	Controlled substances: overdose reporting.
5.	SB 81	Skinner	Parole hearings.
6.	SB 89	Ochoa Bogh	Crimes: stalking.
7.	SB 94	Cortese	Recall and resentencing: special circumstances.
8.	SB 97	Wiener	Criminal procedure: writ of habeas corpus.
9.	SB 226	Alvarado-Gil	Controlled substances: armed possession: fentanyl.
10.	SB 236	Jones	Human trafficking: vertical prosecution program.
11.	SB 241	Min	Firearms: dealer requirements.
12.	SB 268	Alvarado-Gil	Crimes: serious and violent felonies.
13.	SB 281	McGuire	Crimes: aggravated arson.
14.	SB 309	Cortese	Correctional facilities: religious accommodations.
15.	SB 359	Umberg	Prisons: credits: recidivism report.
16.	SB 368	Portantino	Firearms: requirements for licensed dealers.
17.	SB 377	Skinner	Firearms.
18.	SB 404	Wahab	Prohibiting underage, unauthorized marriages.
19.	SB 452	Blakespear	Firearms.
20.	SB 464	Wahab	Criminal law: rights of victims and witnesses of crimes.
21.	SB 474	Becker	Canteens.
22.	SB 602	Archuleta	Trespass.
23.	SB 603	Rubio	Children's advocacy centers: recordings.
24.	SB 690	Rubio	Domestic violence.

25.	SB 753	Caballero	Cannabis: water resources.
26.	SB 796	Alvarado-Gil	Threats: schools and places of worship.

COVID FOOTER

SUBJECT:

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

Date of Hearing: June 27, 2023
Counsel: Mureed Rasool

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

SB 2 (Portantino) – As Amended March 1, 2023

As Proposed to be Amended in Committee

SUMMARY: Removes the 'good cause' requirement for concealed carry weapons licenses (CCW licenses) and creates a new issuing process for CCW licenses following the U.S. Supreme Court ruling in *New York Rifle and Pistol Association v. Bruen* 142 S.Ct. 2111. Specifically, **this bill**:

1) Provides that when a person applies for a new or renewed CCW license to carry a pistol, revolver, or other firearm capable of being concealed on the person, the sheriff or police chief of a jurisdiction shall issue or renew the CCW license upon proof that the applicant is not a disqualified person, as specified, is at least 21 years of age, is the recorded owner of the firearm, has completed a training course, as provided, and is a resident of, or employed in, the jurisdiction.

2) Provides that, prior to the issuance of a license, renewal of a license, or amendment to a license, each licensing authority with direct access to the designated Department of Justice (DOJ) system shall determine if the applicant is the recorded owner of the particular firearm reported in the application.

3) States that, for new CCW applicants, the required course of training must meet all of the following minimum criteria:

   a) No less than 16 hours in length;

   b) Instruction on safe storage, legal transportation methods, laws governing where CCW licensees may carry, and laws regarding permissible use of lethal force in self-defense;

   c) A component of at least one hour on mental health and mental health resources;

   d) Except for the mental health component, the course shall be taught and supervised by DOJ certified firearm instructors;

   e) Require students to pass a written examination; and,

   f) Live-fire exercises, as specified.

4) Provides that, for renewal CCW applicants, the required course of training shall be no less than 8 hours and shall satisfy the other minimum criteria above.

5) States that a sheriff or police chief may issue a specified CCW license to one of their peace officers upon proof that the applicant is not a disqualified person, as defined, is at least 21 years of age, has been deputized or appointed as a peace officer, as specified, and is the recorded owner of the firearm for which the CCW license will be issued, or is authorized to carry a firearm that is registered to the agency for which the licensee has been deputized or appointed.

6) Requires the Attorney General to issue forms to be used for licenses and applications for amendments to licenses, for use until 60 days after the effective date of these provisions.

7) Requires the Attorney General to convene a committee to revise the standard application form for licenses.

8) Provides that the committee convened by the Attorney General shall consist of one representative each from the California State Sheriffs Association, California Police Chiefs Association, and the DOJ.

9) States that, if the committee does not release a revised application form by 60 days after the effective date of these provisions, the Attorney General has the sole authority to revise the form. After the initial revised application is issued, if one of the committee members believes further revisions are needed, they can notify the rest of the members and revise the application with 3 months of the notification. Failure to agree upon the revisions will result in the Attorney General having sole authority to revise the application form.

10) Sets forth a procedure by which the design standards for licenses issued by local agencies, which may be used as proof of licensure throughout the state, may be issued and subsequently revised.

11) States that, among other things, a standard application form for a CCW license must require information regarding an applicant's prior detentions, arrests, criminal convictions, prior specified court orders, prior mental health commitments, whether the applicant has been previously denied a license to carry a firearm, or has had it revoked, three character references, including at least one cohabitant or specified domestic companion, if applicable, and other information sufficient to make a determination as to whether the applicant is a disqualified person.

12) Provides that completed applications for licenses shall contain all information required by the application, as determined by the licensing authority.

13) Mandates that a CCW license contain a licensee's picture, fingerprint, date of birth, an issuance and expiration date, the model of firearm, and a Criminal Identification and Information number, among other things.

14) States that the fingerprints and related information for each applicant shall be taken and forwarded by the appropriate licensing authority to the DOJ which shall make a determination, in a manner to be prescribed through regulations, as to whether the applicant is prohibited from possessing, or owning a firearm and furnish this information to the licensing authority. No new license shall be issued unless this information confirms the

applicant's eligibility to possess or own a firearm.

15) Permits a licensing authority to collect CCW license processing and enforcement related fees and states that the fees must reflect reasonable costs incurred by the authority.

16) Provides that local fees may be increased to reflect increases in the licensing authority's reasonable costs, but in no case shall they exceed those reasonable costs.

17) Provides that a CCW license shall be revoked if at any time the licensing authority determines or is notified by the DOJ of any of the following:

   a) A licensee is prohibited by state or federal law from owning or purchasing a firearm;

   b) A licensee has breached any of the conditions or restrictions relating to concealed carry licenses, as specified;

   c) The licensee provided inaccurate or incomplete information on their application; or,

   d) The licensee has become a disqualified person, as specified.

18) Prohibits a licensee shall not do any of the following while carrying a firearm as authorized by a CCW license:

   a) Consume an alcoholic beverage or controlled substance, as specified;

   b) Be in a place having a primary purpose of dispensing alcoholic beverages for onsite consumption;

   c) Be under the influence of any alcoholic beverage, medication, or controlled substance, as specified;

   d) Carry a firearm not listed on the license or a firearm for which they are not the recorded owner, unless they are a peace officer and have their service firearm;

   e) Falsely represent to a person that the licensee is a peace officer;

   f) Engage in an unjustified display of a deadly weapon;

   g) Fail to carry the license on their person;

   h) Impede a peace officer;

   i) Refuse to display the license or to provide the firearm to a peace officer upon demand; and,

   j) Violate any federal, state, or local criminal law.

19) States that a licensing authority may include additional reasonable restrictions or conditions as to the time, place, manner, and circumstances under which a CCW firearm may be carried.

20) Prohibits a CCW licensee from carrying more than two firearms under their control at one time.

21) Provides that unless a court makes a contrary determination, an applicant shall be deemed to be a disqualified person to receive or renew a license if the applicant:

   a) Is reasonably likely to be a danger to self, or others, as provided;

   b) Has been convicted of contempt of court, as specified;

   c) Has been subject to a specified restraining order, protective order, or other court order unless that order expired, vacated, or was otherwise cancelled more than five years prior to the application;

   d) Has been convicted of specified offenses within the previous 10 years;

   e) Has engaged in an unlawful or reckless use, display or brandishing of a firearm;

   f) In the previous 10 years, has been charged with specified offenses that were dismissed pursuant to a plea or a waiver, as specified;

   g) In the previous five years, has been committed to or incarcerated in county jail or state prison for, or on probation, parole, post-release community supervision, or mandatory supervision, as a result of a conviction of an offense, an element of which involves controlled substances;

   h) Within the previous 10 years has experienced the loss or theft of multiple firearms due to the applicant's lack of compliance with applicable laws; and,

   i) Failed to report a loss of a firearm as required pursuant to existing law.

22) States that in order to determine whether an applicant is a disqualified person to receive or renew a license, the licensing authority shall conduct an investigation that meets, but is not limited to, specified minimum requirements.

23) Requires the licensing authority, within 90 days of receiving the initial completed application for a new license or renewal, to give written notice to the applicant, as specified, of the authority's initial determination as to whether the applicant is a disqualified person, and sets forth procedures related to the approval or denial of an application after initial determination.

24) Provides that if a new license or license renewal is denied or revoked based on a determination that the applicant is not a qualified person for such a license, the notice of this determination shall state the reason as to why the determination was made and also inform the applicant that they may request a hearing from a court to review the denial or revocation.

25) Requires the DOJ to develop a "Request for Hearing to Challenge Disqualified Person Determination" form, and provides that an applicant shall have 30 days after the receipt of the notice of denial to request a hearing to review the denial or revocation.

26) Provides that an applicant who has requested a hearing due to a denial or revocation shall be given a court hearing, after first exhausting any appeals required by the licensing authority, and specifies various procedural rules governing the court hearings.

27) Specifies that, in the appeal hearings, the district attorney shall bear the burden of showing, by a preponderance of the evidence, that the applicant is not a qualified person, and specifies how the court must rule if the district attorney meets, or does not meet, their burden.

28) Authorizes the DOJ to adopt emergency regulations to implement specified portions of these provisions, exempts such regulations from review by the Officer of Administrative Law, and limits the effect of the regulations to two years after the effective date of these provisions.

29) Enumerates places in which CCW licensees are not allow to carry, including: schools, courts, government buildings, correctional institutions, hospitals and other medical service facilities, airports, public transportation, specified public gatherings, businesses where liquor is sold for onsite consumption, public parks or athletic facilities, casinos, sports arenas, libraries, churches, zoos, museums, amusement parks, banks, voting centers, and any other privately-owned commercial establishment open to the public unless that establishment has a sign indicating licensees are allowed to possess their firearm, or if the firearm is transported as authorized by law.

30) Contains limited exceptions to the place restrictions related to the transport of a firearm within or in the immediate area surrounding a vehicle.

31) Adds specified firearm-possession offenses to the list of misdemeanors which, upon conviction, prohibit a person from possessing a firearm for a period of 10 years if the conviction occurs on or after January 1, 2024.

32) Corrects cross-references to regarding the Dealers' Record of Sale (DROS) fund.

33) Sets forth various findings and declarations related to the constitutionality of regulations related to the public carry of firearms and the effect of publicly carrying firearms on public health and the exercise of individual rights.

34) Contains a severability clause.

EXISTING LAW:

1) Establishes various prohibitions and criminal penalties related to the possession of firearms in or around specified government buildings, buildings comprising the Capitol complex in downtown Sacramento, the residences of the Governor and other constitutional officers, airports and other specified public transit facilities. (Pen. Code, §§ 171b, 171c, 171d, 171.5, 171.7.)

2) Establishes various restrictions and penalties regarding the possession and use of firearms in school zones, as defined. (Pen. Code, § 626.9.)

3) Prohibits, in general, a person from carrying a firearm in public, and provides certain exemptions, such as justifiable possession or transportation. (Pen. Code, §§ 25400, 25600 25610, 25612, 25850, 26035, 26015, 26040, 26400, & 26405.)

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

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

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

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

8) Requires applicants for a CCW to complete a course of training that meets specified criteria. (Pen. Code, §§ 26150, 26155, & 26165.)

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

10) Requires an applicant to submit fingerprints to the DOJ before a CCW license can be issued; however, does not require submittal of fingerprints in cases where an applicant has previously applied for a CCW license, or if a current licensee has previously forwarded their fingerprints to the DOJ. (Pen. Code, § 26185.)

11) Provides that CCW applicants must pay a fee in an amount determined by the DOJ, and that the licensing authority of any city, county, or city and county shall impose an additional fee to cover reasonable costs for processing, issuing and enforcing the license. (Pen. Code, § 26190(a), (b).)

12) Specifies the circumstances under which a CCW shall not be issued or shall be revoked by the licensing authority. (Pen. Code, § 26195.)

13) Provides that a CCW license may include reasonable restrictions or conditions that the issuing authority deems warranted, and that any restrictions so imposed must be indicated on any license issued. (Pen. Code, § 26200.)

14) States that a CCW license is valid for any period of time not to exceed two years from the date of the license, except as specified. (Pen. Code § 26220.)

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

16) Provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession of firearms for a period of 10 years and that a violation of that prohibition is punishable as a misdemeanor with imprisonment up to one year or as a state prison felony. (Pen. Code, § 29805.)

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

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

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

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

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

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

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

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

FEDERAL LAW: States that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." (U.S. Const., 2nd Amend.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Gun violence continues to plague our communities. More guns in more places means more people are going to lose their lives. Although crime rates dropped throughout the country from 1977 to 2014, states that rolled back their firearm safety laws have bucked that trend in recent years—for example, the adoption of right-to-carry laws by a state led to a 13-15% increase in violent crime over the next 10 years. The presence of firearms in public increases the dangers of intentional or accidental gun violence—at the workplace, at the movies, or on the road. One study showed that states with permissive right to carry laws experience 29% more workplace homicides than states with more restrictive licensing requirements. The Supreme Court's decision in New York Rifle and Pistol Association v. Bruen changed the way states assess who may carry a concealed weapon in public, but it did not remove the ability of states to address this critical issue. In fact, it provided a roadmap for doing so. Bruen affirmed the ability of states to keep firearms out of the hands of dangerous individuals and out of certain sensitive places. With SB 2, California does just that. It provides objective, reasonable guidance that prevents CCW permits from being issued to dangerous individuals and provides a list of places where weapons may not be carried. These 'sensitive places' range from areas where other rights are exercised—like the voting booth—to areas where sensitive people gather—like parks and playgrounds. California is proud of its record on gun safety and will not stop working to improve our laws to protect the public."

2) **Second Amendment Jurisprudence and CCW Laws**: In many states throughout the U.S., people are generally prohibited from carrying a concealed firearm in public unless they have a CCW license. States vary in what requirements need to be met in order to obtain a CCW license. In *N.Y. State Rifle & Pistol Ass'n v. Bruen* (hereafter *Bruen*), *supra*, 142 S.Ct. 2111, the United States Supreme Court found a New York state requirement that CCW applicants demonstrate a specific safety reason (i.e. "good cause") as to why they need to carry a concealed firearm to be unconstitutional. In finding the requirement unconstitutional, the Court held that the Second Amendment protects, "an individual's right to carry a handgun for self-defense outside the home." (*Id.* at 2122.) The Court stated that there was, "no other constitutional right that an individual may exercise only after demonstrating to government officers some special need." (*Id.* at 2156.) It then established a new test for determining whether a government restriction on carrying a firearm violates the Second Amendment as follows:

> "...[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must

> demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' "
>
> (*Id.* at 2126.)

Although it invalidated the New York statute, and by its reasoning had the same effect on California's similar CCW statute, the Court made clear that regulations consistent with historical precedent, such as those that prohibit weapons in "sensitive places," would likely pass constitutional muster. (*Bruen, supra*, 142 S.Ct. at 2124, 2133-34.) However, the Court gave little guidance on what constitutes a sensitive place, beyond stating that "expanding the category of 'sensitive places' to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly." (*Id.* at 2133-34.)

Furthermore, the Court intimated that CCW regimes can still require applicants to undergo a background check or pass firearm safety courses, and that these requirements are suitable to ensure only "law-abiding, responsible citizens" are granted CCWs. (*Id.* at 2138, fn. 9.) The Court chose not to undertake an exhaustive historical analysis of what is constitutional and what is not when it comes to CCWs. (*Id.* at 1234.) As such, it acknowledged that applying constitutional principles to novel modern conditions is difficult, but nevertheless concluded that judges are equipped with the proper decision-making skills to answer such questions. (*Ibid.*)

In reaching its decision, the Court also recognized that California is among the limited number of states that have an analogue to New York's "proper cause" standard in their concealed carry laws. (*Bruen, supra*, 142 S.Ct. at 2124.) Consequently, on June 24, 2022, the California Attorney General issued a "Legal Alert," expressing his view that the Court's decision renders California's "good cause" standard to secure a permit to carry a concealed weapon in most public places unconstitutional and unenforceable. (Attorney General Rob Bonta. *Legal Alert*. (June 24, 2022) <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf> [as of Jun. 21, 2023].)

This bill seeks to update and restructure California's CCW laws in light of the *Bruen* decision. Put briefly, it does so by listing conduct and behavior that would disqualify a person from being considered a "law-abiding, responsible citizen." It also lists numerous locations that are considered sensitive, and where a CCW licensee may not carry their firearm.

As the Supreme Court did not undertake an exhaustive historical analysis, it is an open question what provisions of this bill are and are not constitutional. Already, there have been varied, and at times, curious court decisions made as a result of the *Bruen* case. For example, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.)

That said, New York and New Jersey have passed CCW laws substantially similar to the provisions of this bill. (Buffalo News. *New York amends concealed carry law after legal challenges from gun owners*. (Updated May 26, 2023) <https://buffalonews.com/news/local/new-york-amends-concealed-carry-law-legal-challenges-buffalo-mass-shooting/article_6ed42e82-ef32-11ed-90b8-33e52d67d2a3.html#:~:text=New%20York%20amends%20concealed%20carry%20law%20after%20legal%20challenges%20from%20gun%20owners,-Jay%20Tokasz&text=Among%20the%20key%20elements%20of,buildings%20and%20houses%20of%20worship.> [as of Jun. 21, 2023]; NorthJersey.com. *New Jersey appeals decision that upended restrictions on concealed carry*. (Updated May 23, 2023) <https://www.northjersey.com/story/news/new-jersey/2023/05/23/nj-gun-law-state-appeals-decision-that-overturned-concealed-carry/70247615007/> [as of Jun. 21, 2023].) Both states' laws have been challenged in federal court and the ultimate constitutionality of the laws remains to be seen. (*Ibid.*) This bill faces a similar situation were it to become law. In this respect, it should be noted that this bill contains a severability clause.

3) **DROS Fee History and Its Relation to Ammunition and Precursor Parts**: The DROS fee was first established in 1982 in order to cover DOJ's cost of performing a background check on firearms purchasers. (*Gentry v. Becerra*, (hereafter *Becerra*) (Mar. 4, 2019, No. 34-2013-80001667 at pg. 2.) Sacramento Sup. Ct., <https://michellawyers.com/wp-content/uploads/2019/09/2019-03-04-Ruling-on-Hearing-on-Petition-for-Writ-of-Mandate-Complaint.pdf> [as of Jun. 21, 2023]; affirmed by *Gentry v. Rodriquez* (2021) Cal. App. Unpub. LEXIS 2004, 2021 WL 1152731.)

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

Although the initial DROS fee was only intended to cover the cost of background checks, subsequent legislation contemplated that DROS funds be used for other purposes, such as enforcement of the Armed Prohibited Persons System (APPS). *Becerra*, *supra*, No. 34-2013-80001667 at 3.)

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

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

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

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

However, the cross-references to Penal Code section 28225 were never updated to reflect the changes made by AB 1669 (Bonta). This bill would update the erroneous cross-references and clarify that the DROS fees remain unchanged.

4) **Argument in Support**: According to the bill's co-sponsor, the *DOJ*, "…Under SB 2, California's 'good moral character' standard will be updated to require that, prior to issuing a concealed carry license, the licensing authority must determine that the applicant is not a disqualified individual based on an assessment of defined and objective criteria. A licensing authority will be required to deny a license or renewal application if it determines that the applicant has committed certain acts, been convicted of certain crimes, or has been the subject of certain restraining orders, all of which indicate, in California's view, that it is reasonably likely that the applicant has been or is reasonably likely to be a danger to themselves or others. This bill further strengthens current law by expanding gun-free zones, imposing more stringent training requirements, setting the minimum age at 21 years, and establishing a more uniform licensing standard. Lastly, SB 2 will clean up outdated provisions and cross- references to other statutory provisions relating to the Dealer Record of Sale (DROS) fee, the supplemental fee, and the authority of Department of Justice (DOJ) in the regulation of the sale of firearm precursor parts and authorization to issue a firearm precursor part vendor license.

   "The Bruen decision has resulted in a substantial increase in applications for concealed carry weapon permits, which will ultimately result in more guns being carried in our communities. It is indisputable that more guns in public leads to an increased risk of violence. SB 2 strikes the appropriate balance between respecting Californians' rights to keep and bear arms and the public's equally weighty interests in having safe public spaces.

   "California continues to have one of the lowest gun death rates in the nation because of this state's commitment to commonsense gun safety laws like SB 2…"

5) **Argument in Opposition**: According to the *Gun Owners of California*, "…While it is true that the legislature has a compelling interest in protecting both individual rights and public safety, it's important to note that the legislature cannot balance one set of rights by diminishing others. The factual record is very clear: lawful CCW holders are not killing,

injuring, or traumatizing individuals with acts of gun violence or terrorism. The existing CCW system operated by the California Department of Justice and other issuing authorities has everything needed for law enforcement to effectively do their job. The proof is that CCW holders in California are among the most law-abiding citizens in the state.

"Senator, as with your SB 918 of last year, you quoted the rulings of the Ninth Circuit Court of Appeals regarding historical elements of concealed carry laws over the past 700 years in England and America. You also defined Justice Antonin Scalia's recognition of 'sensitive places' in Heller v DC, as descriptive and not as exclusive when he mentioned schools and government buildings. By your definition, the legislature can designate any public place as sensitive, however this is clearly not what Justice Scalia said. He was specific in his comments regarding schools and government buildings. Further, in NYSRPA v Bruen, Justice Clarence Thomas held that while his decision is not a straight-jacket preventing state governments from imposing rules and requirements, neither is it a blank check for those governments to legislate in excess. Every rule and regulation must be objective and must have a historical analog to the text, history and tradition of the Second Amendment at the founding. He specifically warned against expanding the definition of sensitive places to include vast areas used by the public at-large. The concurring opinion by Justice Brett Kavanaugh gave clear direction for the 6 states who have 'may issue' regimes for the issuance of CCWs. He stated: 'Going forward, therefore, the 43 States that employ objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so. Likewise, the 6 States including New York potentially affected by today's decision may continue to require licenses for carrying handguns for self-defense so long as those States employ objective licensing requirements like those used by the 43 shall issue States.'

"The provisions of SB 2 are the antithesis of the objective licensing requirements used by the 43 shall issue states. Justice Thomas also warned lower courts to refrain from approving 'outlier' regimes and regulations because they are unconstitutional. The Supreme Court made it clear that any CCW regime that is based on 'subjective' criteria is unconstitutional. SB 2 is playing a shell game by removing the statutory language that allows issuing authorities to use subjective 'good cause' requirements in the issuance or rejection of CCWs, shifting the subjective requirements to a 'good moral character' provision in the law that this bill describes as a 'disqualified person'. Granting the authority to issuing agencies to base permit issuance on subjective evaluations of character references and social media posts is highly prejudicial. This is clearly an effort to use someone's 1st Amendment right of free speech to infringe on their Second Amendment right. To reiterate what we stated last year, this doesn't pass the chuckle test.

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

"There are also significant problems with finding (h). As previously mentioned, the studies cited are irrelevant given that they were conducted years prior and over a dozen new states have become 'right to carry'. Moreover, the bill unfairly classifies 18-year-old Californians as 'half-citizens' by denying them the right to protect themselves with a firearm from the

threat of great bodily injury or death; this creates an ethical and constitutional problem that is being brushed under the carpet. If they are old enough to vote and to serve in our nation's military, they are old enough to exercise each one of their Constitutional rights including the Second Amendment. A Federal District Court recently ruled in Andrews v McCraw that this is unconstitutional.

"The provisions requiring renewing CCW holders to submit a new set of fingerprints is retaliatory. It's no secret that the DOJ currently maintains a set on file and preventing spouses from having each other's firearms on both of permits is nothing but punitive. Last I checked, people cannot change their fingerprints, except, of course in the movies. The cost of a new set of fingerprints will be approximately $100, thereby making it more expensive, negatively impacting lower-income applicants to whom $100 is a significant barrier and an unrealistic financial burden.

"In closing, the severability clause in the legislation is a clear indication and understanding that many components (if not all) of this legislation will ultimately be found unconstitutional. In due course, SB 2 will be a costly and unnecessary blemish for California to bear. This can be avoided."."

6) **Related Legislation**: AB 1133 (Schiavo), would change the training course requirements for CCW applicants. AB 1133 is currently in the Senate Public Safety Committee.

7) **Prior Legislation**: SB 918 (Portantino), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 918 failed passed on the Assembly floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
Brady Campaign to Prevent Gun Violence
California Academy of Family Physicians
California Catholic Conference
California School Employees Association
City of Los Angeles
City of San Diego
City of Santa Monica
County of Los Angeles Board of Supervisors
County of Santa Clara
Everytown for Gun Safety Action Fund
Friends Committee on Legislation of California
Giffords
Giffords Law Center to Prevent Gun Violence
Greater Sacramento Urban League
League of Women Voters of California
Los Angeles County
Los Angeles Unified School District
March for Our Lives Action Fund

National Association of Pediatric Nurse Practitioners (NAPNAP)
Prosecutors Alliance California
Sutter Health
Westchester/playa Democratic Club
Women for American Values and Ethics Action Fund

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Reserve Peace Officers Association
California Rifle and Pistol Association, INC.
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Gun Owners of California, INC.
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
National Rifle Association - Institute for Legislative Action
Newport Beach Police Association
Novato Police Officers Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

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

Amended Mock-up for 2023-2024 SB-2 (Portantino (S))

Mock-up based on Version Number 97 - Amended Senate 3/1/23
Submitted by: Mureed Rasool, 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 Legislature has compelling interests in protecting both individual rights and public safety. The Legislature's intent and purpose in clarifying California's requirements governing the issuance of carry concealed weapons (CCW) licenses, and clarifying Dealers' Record of Sale cross-references, is to protect its residents' rights to keep and bear arms while also protecting the public's health and safety in the state by reducing the number of people killed, injured, and traumatized by gun violence; protecting the exercise of other fundamental rights, including the right to worship, attain an education, vote, and peaceably assemble and demonstrate; ensuring that law enforcement is able to effectively do its job; and combating terrorism.

(b) While the United States Supreme Court has made clear that the Second Amendment to the United States Constitution imposes some restrictions on states' ability to regulate firearms, it has recognized that the Second Amendment to the United States Constitution is not a "regulatory straightjacket." N.Y. State Rifle & Pistol Ass'n v. Bruen (2022), 142 S. Ct. 2111, 2133. Indeed, the Second Amendment allows States to adopt a "'variety' of gun regulations." N.Y. State Rifle & Pistol Ass'n (2022), 142 S. Ct. 2111, 2162 (conc. opn. of Kavanaugh, J.). And when it comes to restrictions on carrying firearms in public, the United States Supreme Court has recognized three times that states may restrict the carrying of firearms in "sensitive places." N.Y. State Rifle & Pistol Ass'n v. Bruen (2022), 142 S. Ct. 2111, 2133; see also McDonald v. City of Chicago (2010) 561 U.S. 742, 786 (plur. opn. of Alito, J.); District of Columbia v. Heller (2008) 554 U.S. 570, 626. It has also recognized that states may prohibit individuals who are not "law-abiding, responsible citizens" from carrying firearms in public. N.Y. State Rifle & Pistol Ass'n v. Bruen (2022), 142 S. Ct. 2111, 2138 fn.9.

(c) Indeed, the United States Supreme Court has affirmed the validity of "shall-issue" concealed carry licensing standards enacted in 43 states that include qualification standards that "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding responsible citizens,'" N.Y. State Rifle & Pistol Ass'n v. Bruen (2022) 142 S. Ct. 2111, 2138 fn.9. The laws of at least 21 of these states authorize officials to deny concealed carry licenses to otherwise

eligible applicants who are found not to be law-abiding or responsible based on a determination that the applicant lacks the character or temperament to carry firearms in public spaces or otherwise presents a danger to self, others, or the community at large. (See Ala. Code § 13A-11-75(a)(1)(a); Ark. Code Ann. § 5-73-308(b)(1); Colo. Rev. Stat. § 18-12-203(2); Conn. Gen. Stat. §29-28(b); Del. Code, Tit. 11, § 1441; Ga. Code § 16-11-129(d)(4); 430 Ill. Comp. Stat. § 66/15; Ind. Code § 35-47-2-3(g); Iowa Code §724.8(3); Me. Rev. Stat. Ann., Tit. 25, § 2003; Minn. Stat. § 624.714; Mo. Rev. Stat. § 571.101.2(7); Mont. Code § 45-8-321(2); N.D. Cent. Code § 62.1-04-03(1)(e); Or. Rev. Stat. § 166.293(2); 18 Pa. Cons. Stat. § 6109(e)(1)(i); R.I. Gen. Laws § 11-47-11; S.D. Codified Laws § 23-7-7.1; Utah Code § 53-5-704(3)(a); Va. Code § 18.2-308.09(13); Wyo. Stat. § 6-8-104(g)). The United States Supreme Court repeatedly affirmed the validity of these states' standards, including specifically and approvingly citing the standards adopted in Connecticut, which, the Court noted, validly preclude an otherwise eligible applicant from qualifying for a concealed carry license if the licensing official determines the applicant's "conduct has shown them to be lacking the essential character of temperament necessary to be entrusted with a weapon." N.Y. State Rifle & Pistol Ass'n v. Bruen (2022) 142 S. Ct. 2111, 2123 fn.1.

(d) Over the past several years, a wealth of empirical studies have shown that crime is higher when more people carry firearms in public places. While California and other states have decided to limit the places and conditions under which residents may carry firearms, over the past several decades other states have decided to allow most people to carry firearms in most public places. Those later states have seen markedly higher crime rates. According to one study, in the 33 states that adopted these "right-to-carry" laws, violent crime was substantially higher—13 to 15 percent higher—10 years after the laws were adopted than it would have been, had those states not adopted those laws. See Donohue, et al., "Right-to-Carry" Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis (2019) 16 J. Empirical Legal Stud. 198. That same study acknowledged that crime had dropped in both "right-to-carry" states and other states over the past several decades, but concluded that the violent crime reduction in states that did not adopt "right-to-carry" laws was an order of magnitude higher than those that did—a 42.3 percent drop in violent crime for those states that did not adopt "Right-to-Carry" laws compared to just a 4.3 percent drop for those that did.

(e) Broadly allowing individuals to carry firearms in most public areas increases the number of people wounded and killed by gun violence. Among other things, pervasive carrying increases the lethality of otherwise mundane situations, as we have seen shots fired in connection with road rage, talking on a phone in a theater, playing loud music at a gas station, a dispute over snow shoveling, and a dispute over the use of a disabled parking spot. Importantly, in many of these incidents, the shooters held permits that allowed them to carry firearms in public, meaning that they met the criteria necessary to secure a permit, which often include a requirement that the person not previously have been convicted of a serious crime.

(f) Another study concluded that states that changed from prohibiting concealed carry of guns to a regime where the state must issue a CCW permit to any qualified applicant who requests one—a transition to a "shall issue" jurisdiction—experienced a 12.3 percent increase in gun-related murder rates, and a 4.9 increase in overall murder rates. Gius, Using the Synthetic Control Method to Determine the Effects of Concealed Carry Laws on State-Level Murder Rates (2019) 57 Int'l

Rev. L. & Econ. 1. Two other studies concluded that states with "shall-issue" laws had higher overall homicide rates, higher firearm homicide rates, and higher handgun homicide rates as compared to the "may-issue" regimes in place in California and other states. Siegel, et al., Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States (2017) 107 Am. J. Pub. Health 1923; Siegel, et al., The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA, 1991 – 2016: A Panel Study (2019) 34 J. Gen. Internal Med. 2021. Several other studies reached similar results. Anita Knopov et al., The Impact of State Firearm Laws on Homicide Rates among Black and White Populations in the United States, 1991–2016 (2019) 44 Health & Soc. Work 232; John J. Donohue, Laws Facilitating Gun Carrying and Homicide (2017) 107 Am. J. Pub. Health 1864; Emma E. Fridel, Comparing the Impact of Household Gun Ownership and Concealed Carry Legislation on the Frequency of Mass Shootings and Firearms Homicide (2021) 38 Just. Q. 892; Cassandra K. Crifasi, Correction to: Association between Firearm Laws and Homicide in Urban Counties (2018) 95 J. Urban Health 773; Paul R. Zimmerman, The Deterrence of Crime Through Private Security Efforts: Theory and Evidence (2014) 37 Int'l Rev. L. & Econ. 66.

(g) States with permissive "right-to-carry" laws also witness higher rates of firearm workplace homicides than those that did not have those laws. One study concluded that states with "right-to-carry" laws experienced 29 percent greater rates of firearm workplace homicides between 1992 and 2017 than those that did not. Mitchell L. Doucette et al., "Right-to-Carry" Laws and Firearm Workplace Homicides: A Longitudinal Analysis (1992–2017) (2019) 109 Am. J. Pub. Health 1747, 1751. Another peer-reviewed study found that restricting the ability to carry concealed weapons was associated with a 5.79 percent reduction in workplace homicide rates. Erika L. Sabbath et al., State-Level Changes in Firearm Laws and Workplace Homicide Rates: United States, 2011 to 2017 (2020) 110 Am. J. Pub. Health 230.

(h) While several studies from the late 1990s and early 2000s purported to conclude that increases in "right-to-carry" laws either decreased or had no effect on crime, many other early studies concluded that it increased crime. In 2005, the National Research Council issued a report evaluating the then-current literature about the impact of "right-to-carry" laws on crime, and concluded that it was "'impossible to draw strong conclusions from the existing literature on the causal impact' of "right-to-carry" laws on violent crime and property crime in general and rape, aggravated assault, auto theft, burglary, and larceny in particular," and that the "existing data and methods" were likely insufficient to resolve the question, and that "new analytical approaches and data" were needed "if further headway is to be made." Nat'l Research Council, Firearms and Violence: A Critical Review (2005) 272, 275.

(i) Since that time a number of social scientists have taken up the National Research Council's call. Those studies overwhelmingly support the conclusion that more carrying of firearms in public leads to an increase in crime: of the 35 social science studies looking at this issue since the National Research Council issued its report in 2005, 23 found an increase in crime, 7 found no effect, and 5 found a decrease in crime. A 2014 study from the Harvard Injury Control Research Center concluded that a sizable majority of firearms researchers disagree with the statement that the change in state level concealed carry laws in the United States over the past few decades from more restrictive to more permissive has reduced crime rates.

(j) Widespread carrying of firearms also impedes the exercise of other fundamental rights. When firearms are present in public spaces, it makes those places less safe, which discourages people from attending protests, going to school, peacefully worshiping, voting in person, and enjoying other activities.

(1) (A) While the net effect of policies that allow most people to carry firearms in most places have negatively impacted public safety broadly, their effects are likely to be far more deleterious when extended to college campuses. Risks of violence, suicide attempts, alcohol abuse, and other risky behavior are greatly elevated among college-aged, youth and in the campus environment, and the presence of firearms greatly increases the risk of lethal and near-lethal outcomes from these behaviors and in this context. Daniel W. Webster et al., Firearms on College Campuses: Research Evidence and Policy Implications, Johns Hopkins Bloomberg Sch. of Pub. Health (Oct. 15, 2016). Moreover, once Georgia passed a law allowing firearms to be carried on college campuses, campus members reported a statistically significant increase in perceptions of the campus as unsafe, fear of crime on campus, and lack of confidence in campus police; and a "statistically significantly increase in the proportion of campus members who reported experiencing fearful conflicts on campus." Jennifer McMahon-Howard et al., Examining the Effects of Passing a Campus Carry Law: Comparing Campus Safety Before and After Georgia's New Campus Carry Law, 20 J. of Sch. Violence (2021) 430.

(B) Widespread carrying can also affect the ability to learn in primary and secondary schools. One study concluded that students exposed to school shootings have an increased absence rate, are more likely to be chronically absent and repeat a grade in the two years following the event, and suffer negative long-term impacts on high school graduation rates, college enrollment and graduation, and future employment and earnings. Marika Cabral et al., Trauma at School: The Impacts of Shootings on Students' Human Capital and Economic Outcomes, Nat'l Bureau of Econ. Research (Dec. 2020). Another study looked at longer term consequences of school shootings, finding that exposure to shootings at schools resulted in lower test scores, increased absenteeism, and increased subsequent mortality for those students, and particularly boys, who are exposed to the highest-victimization school shootings. Phillip Levine and Robin McKnight, Exposure to a School Shooting and Subsequent Well-Being, Nat'l Bureau of Econ. Research (Dec. 2020).

(2) Widespread public carry also intimidates those who hope to peacefully worship. Places of worship already experience serious incidents or threats of violence. According to one study, the percentage of mass shootings motivated by religious hate escalated from 1 percent between 1966 and 2000 to 9 percent during 2000–2014 to 18 percent during 2018-February 2020. Richard R. Johnson, Serious Violence at Places of Worship in the U.S.—Looking at the Numbers, Dolan Consulting Grp. (Sept. 2019). A review of the Federal Investigation Bureau's National Incident-Based Reporting System data—which covers only 20 percent of the country's population—from 2000 through 2016 found that 1,652 incidents of "serious violence" occurred at places of worship, including aggravated assaults, shootings, stabbings, and bombings, with 57 percent involving the use of a firearm. Extrapolating those figures to the entire country would suggest that there are about 480 incidents of serious violence at places of worship in the United States each year. Allowing more people to carry in places of worship threatens to make these incidents more likely.

(3) Carrying firearms impedes the exercise of other rights of the First Amendment to the United States Constitution, including the right to protest and vote. In a nationally representative survey, 60 percent responded that they would be "very unlikely" to attend a protest if guns were present, whereas only 7 percent said they would be "very likely" to attend such a protest. Alexandra Filindra, Americans Do Not Want Guns at Protests, this Research Shows, Wash. Post (Nov. 21, 2021). Another study concluded that 16 percent of demonstrations where firearms were present turned violent, as compared to less than 3 percent of demonstrations where firearms were not present. Everytown for Gun Safety & Armed Conflict Locations & Event Data Project, Armed Assembly: Guns, Demonstrations, and Political Violence in America (2021).

(k) An individual does not need to carry several firearms at any one time in order to effectively defend themselves. Studies have shown that, on average, individuals fire approximately two rounds when using a firearm in self-defense inside or outside of the home, including approximately 27 percent of incidents in which no shots are fired and the mere brandishing of the firearm is sufficient for self-defense. Limiting an individual to carrying no more than two firearms in public at any given time will not impair the ability of law-abiding, responsible individuals to engage in effective self-defense with a firearm.

(l) Laws requiring an assessment of dangerousness in connection with obtaining firearms have saved lives. One study concluded that since California's gun violence restraining order process—which allows family members and law enforcement to petition a court for an order temporarily prohibiting a person from purchasing or possessing firearms, if a court finds that the person is a danger to themselves or others—took effect in January 2016, there have been 21 instances in which the statute was used to prevent a mass shooting. Wintemute, et al., Extreme Risk Protection Orders Intended to Prevent Mass Shootings, 171 Annals of Internal Med. (2019) 655, 655-658. According to another study, 56 percent of mass shooters exhibited warning signs that they posed a risk to themselves or others before they carried out the shooting. Everytown for Gun Safety Support Fund, "Mass Shootings in America," (Nov. 2020). One hundred percent of perpetrators of school violence showed concerning behaviors before committing their acts, according to a study by the United States Secret Service and the United States Department of Education. U.S. Secret Serv., Nat'l Threat Assessment Ctr., Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence 43 (2019).

(m) Broad public carry laws also impede the ability of law enforcement to ensure the public's safety. For example, laws allowing open carry of firearms imperil law enforcement officers on the front lines by making it much more difficult for an officer to discern if a person is a threat, and when there is an active shooter situation, makes it harder to determine the source of the threat.

SEC. 2. Section 171b of the Penal Code is amended to read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a

public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 17235 or in any provision listed in Section 16590.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any taser or stun gun as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun or paint gun.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while they are actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if they are a party to an action pending before the court.

(3) A person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6 who possesses the firearm within a building designated for a court proceeding, including matters before a superior court, district court of appeal, or the California Supreme Court, and is a justice, judge, or commissioner of the court.

(4) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.

(5) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government.

(6) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).

(7) (A) A person who, for the purpose of sale or trade, brings any weapon that may otherwise be lawfully transferred, into a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4 of Part 6.

(B) A person who, for purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed, into a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4 of Part 6.

(c) As used in this section, "state or local public building" means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

SEC. 3. Section 171d of the Penal Code is amended to read:

171d. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by that officer to assist in making arrests or preserving the peace while they are actually engaged in assisting the officer, a member of the military forces of this state or of the United States engaged in the performance of their duties, the Governor or a member of their immediate family or a person acting with their permission with respect to the Governor's Mansion or any other residence of the Governor, any other constitutional officer or a member of their immediate family or a person acting with their permission with respect to the officer's residence, or a Member of the Legislature or a member of their immediate family or a person acting with their permission with respect to the Member's residence, shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both the fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170, if they do either of the following:

(a) Bring a ~~loaded~~ firearm into, or possess a firearm within, the Governor's Mansion, or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

(b) Bring a ~~loaded~~ firearm upon, or possess a ~~loaded~~ firearm upon, the grounds of the Governor's Mansion or any other residence of the Governor, the residence of any other constitutional officer, or the residence of any Member of the Legislature.

SEC. 4. Section 171.5 of the Penal Code is amended to read:

171.5. (a) For purposes of this section:

(1) "Airport" means an airport, with a secured area, that regularly serves an air carrier holding a certificate issued by the United States Secretary of Transportation.

(2) "Passenger vessel terminal" means only that portion of a harbor or port facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal Regulations, with a secured area that regularly serves scheduled commuter or passenger operations.

(3) "Sterile area" means a portion of an airport defined in the airport security program to which access generally is controlled through the screening of persons and property, as specified in Section 1540.5 of Title 49 of the Code of Federal Regulations, or a portion of any passenger vessel terminal to which, pursuant to the requirements set forth in Sections 105.255 and 105.260(a) of Title 33 of the Code of Federal Regulations, access is generally controlled in a manner consistent with the passenger vessel terminal's security plan and the maritime security level in effect at the time.

(b) It is unlawful for any person to knowingly possess any firearm in any building, real property, or parking area under the control of an airport, except as provided for in subdivision (b), (c), or (e) of Section 26230.

(c) It is unlawful for any person to knowingly possess, within any sterile area of an airport or a passenger vessel terminal, any of the following items:

(1) Any knife with a blade length in excess of four inches, the blade of which is fixed, or is capable of being fixed, in an unguarded position by the use of one or two hands.

(2) Any box cutter or straight razor.

(3) Any metal military practice hand grenade.

(4) Any metal replica hand grenade.

(5) Any plastic replica hand grenade.

(6) Any imitation firearm as defined in Section 417.4.

(7) Any frame, receiver, barrel, or magazine of a firearm.

(8) Any unauthorized tear gas weapon.

(9) Any taser or stun gun as defined in Section 244.5.

(10) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun or paint gun.

(11) Any ammunition as defined in Section 16150.

(d) Subdivisions (b) and (c) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while they are actually engaged in assisting the officer.

(2) A person who has authorization to possess a weapon specified in subdivision (c), granted in writing by an airport security coordinator who is designated as specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and who is responsible for the security of the airport.

(3) A person, including an employee of a licensed contract guard service, who has authorization to possess a weapon specified in subdivision (c) granted in writing by a person discharging the duties of Facility Security Officer or Company Security Officer pursuant to an approved United States Coast Guard facility security plan, and who is responsible for the security of the passenger vessel terminal.

(e) Subdivision (b) shall not apply to, or affect, any person possessing an unloaded firearm being transported in accordance with Sections 1540.111(c)(2)(iii) and 1540.111(c)(2)(iv) of Title 49 of the Code of Federal Regulations, which require a hard-sided, locked container, so long as the person is not within any sterile area of an airport or a passenger vessel terminal.

(f) A violation of this section is punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(g) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission that is punishable in different ways by this and any other provision of law shall not be punished under more than one provision.

(h) Nothing in this section is intended to affect existing state or federal law regarding the transportation of firearms on airplanes in checked luggage or the possession of the items listed in subdivision (c) in areas that are not "sterile areas."

SEC. 5. Section 171.7 of the Penal Code is amended to read:

171.7. (a) For purposes of this section:

(1) "Public transit facility" means any land, building, or equipment, or any interest therein, including any station on a public transportation route, to which access is controlled in a manner consistent with the public transit authority's security plan, whether or not the operation thereof produces revenue, that has as its primary purpose the operation of a public transit system or the providing of services to the passengers of a public transit system. A public transit system includes the vehicles used in the system, including, but not limited to, motor vehicles, streetcars, trackless trolleys, buses, light rail systems, rapid transit systems, subways, trains, or jitneys, that transport members of the public for hire.

(2) "Firearm" has the same meaning as specified in subdivisions (a) and (b) of Section 16520.

(b) It is unlawful for any person to knowingly possess any of the following in a public transit facility:

(1) Any firearm.

(2) Any imitation firearm as defined in Section 417.4.

(3) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun or paint gun.

(4) Any metal military practice hand grenade.

(5) Any metal replica hand grenade.

(6) Any plastic replica hand grenade.

(7) Any unauthorized tear gas weapon.

(8) Any undetectable knife, as described in Section 17290.

(9) Any undetectable firearm, as described in Section 17280.

(c) (1) Subdivision (b) shall not apply to, or affect, any of the following:

(A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(B) A retired peace officer with authorization to carry concealed weapons as described in Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(C) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.

(D) A qualified law enforcement officer of another state or the federal government, as permitted under the Law Enforcement Officers Safety Act pursuant to Section 926B or 926C of Title 18 of the United States Code.

(E) Any person summoned by any of the officers listed in subparagraphs (A) to (C), inclusive, to assist in making arrests or preserving the peace while they are actually engaged in assisting the officer.

(F) A person who is responsible for the security of the public transit system and who has been authorized by the public transit authority's security coordinator, in writing, to possess a weapon specified in subdivision (b).

(G) A person possessing an unloaded firearm while traveling on a public transit system that offers checked baggage services, so long as the firearm is stored in accordance with the public transit system's checked baggage policies.

(2) Paragraph (7) of subdivision (b) shall not apply to or affect the possession of a tear gas weapon when possession is permitted pursuant to Division 11 (commencing with Section 22810) of Title 3 of Part 6.

(d) A violation of this section is punishable by imprisonment in a county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(e) The provisions of this section are cumulative, and shall not be construed as restricting the application of any other law. However, an act or omission that is punishable in different ways by this and any other provision of law shall not be punished under more than one provision.

(f) This section does not prevent prosecution under any other provision of law that may provide a greater punishment.

(g) This section shall be interpreted so as to be consistent with Section 926A of Title 18 of the United States Code.

SEC. 6. Section 626.9 of the Penal Code is amended to read:

626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone as defined in paragraph (4) of subdivision (e), shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) (A) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person is within a locked container in a motor vehicle or is within the locked trunk of a motor vehicle at all times.

(B) This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that they are in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to their life or safety. This subdivision does not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that they were in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615, 25625, 25630, or 25645.

(5) When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is within a distance of 1,000 feet from the grounds of the public or private school, but is not within any building, real property, or parking area under the control of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or on a street or sidewalk immediately adjacent to a building, real property, or parking area under the control of that public or private school. Nothing in this paragraph shall prohibit a person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6 from carrying a firearm in accordance with that license as provided in subdivisions (b), (c), or (e) of Section 26230.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone as defined in paragraph (4) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(f) (1) A person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) A person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400.

(B) By imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) A person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g) (1) A person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that they be imprisoned in a county jail for not less than three months.

(2) A person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that they be imprisoned in a county jail for not less than three months.

(3) A person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that they be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, their designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, their designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary

entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(l) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while they are actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of their duties, or an armored vehicle guard, engaged in the performance of their duties as defined in subdivision (d) of Section 7582.1 of the Business and Professions Code.

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(o) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650.

(3) Sections 25900 to 25910, inclusive.

(4) Section 26020.

(5) Paragraph (2) of subdivision (c) of Section 26300.

(p) This section does not apply to a peace officer appointed pursuant to Section 830.6 who is authorized to carry a firearm by the appointing agency.

(q) (1) This section does not apply to the activities of a program involving shooting sports or activities, including, but not limited to, trap shooting, skeet shooting, sporting clays, and pistol

shooting, that are sanctioned by a school, school district, college, university, or other governing body of the institution, that occur on the grounds of a public or private school or university or college campus.

(2) This section does not apply to the activities of a state-certified hunter education program pursuant to Section 3051 of the Fish and Game Code if all firearms are unloaded and participants do not possess live ammunition in a school building.

SEC. 7. Section 25350 is added to the Penal Code, to read:

25350. (a) If any section, subdivision, paragraph, subparagraph, sentence, clause, or phrase of any provision in this division is for any reason held unconstitutional, that decision does not affect the validity of any other provision in the division. The Legislature hereby declares that it would have passed the provisions listed in this division and each chapter, section, subdivision, paragraph, subparagraph, sentence, clause, and phrase of those provisions irrespective of the fact that any one or more other sections, subdivisions, paragraphs, subparagraphs, sentences, clauses, or phrases be declared unconstitutional.

(b) If any application of any provision in this division to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and shall not be affected. All constitutionally valid applications of this division shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this division to impose an unconstitutional burden in a large or substantial fraction of relevant cases, the applications that do not present an unconstitutional burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an unconstitutional burden. If any court declares or finds a provision of this division facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and the California Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the Legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and the California Constitution.

SEC. 8. Section 25610 of the Penal Code is amended to read:

25610. Section 25400 shall not be construed to prohibit any citizen of the United States over 18 years of age who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person for any purpose specified in Sections 25510 to 25595, inclusive, provided that either of the following applies to the firearm:

(a) The firearm is unloaded, within a motor vehicle, and locked in the vehicle's trunk or in a locked container in the vehicle.

(b) The firearm is unloaded, carried by the person directly to or from any motor vehicle, and, while carrying the firearm, the firearm is contained within a locked container.

SEC. 9. Section 25850 of the Penal Code is amended to read:

25850. (a) A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city, city and county, or in any public place or on any public street in a prohibited area of an unincorporated area of a county or city and county.

(b) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(c) Carrying a loaded firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) Where the person is not listed with the Department of Justice pursuant to Section 11106 as the recorded owner of the handgun, by imprisonment pursuant to subdivision (h) of Section 1170, or

by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 23515, or of any crime made punishable under a provision listed in Section 16580, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned for a period of at least three months.

(2) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this section or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this section, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) A violation of this section that is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(f) Nothing in this section, or in Article 3 (commencing with Section 25900) or Article 4 (commencing with Section 26000), shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(g) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(1) When the person arrested has violated this section, although not in the officer's presence.

(2) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(h) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c), if the peace officer has probable cause to believe that the person is carrying a handgun in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the recorded owner of that handgun.

SEC. 10. Section 26150 of the Penal Code is amended to read:

26150. (a) When a person applies for a new license or license renewal to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county shall issue or renew a license to that person upon proof of all of the following:

(1) The applicant is not a disqualified person to receive such a license, as determined in accordance with the standards set forth in Section 26202.

(2) The applicant is at least 21 years of age, and presents clear evidence of the person's identity and age, as defined in Section 16400.

(3) The applicant is a resident of the county or a city within the county, or the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business. Prima facie evidence of residency within the county or a city within the county includes, but is not limited to, the address where the applicant is registered to vote, the applicant's filing of a homeowner's property tax exemption, and other acts, occurrences, or events that indicate presence in the county or a city within the county is more than temporary or transient. The presumption of residency in the county or city within the county may be rebutted by satisfactory evidence that the applicant's primary residence is in another county or city within the county.

(4) The applicant has completed a course of training as described in Section 26165.

(5) The applicant is the recorded owner, with the Department of Justice, of the pistol, revolver, or other firearm for which the license will be issued.

(b) The sheriff shall issue or renew a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) (1) Nothing in this chapter shall preclude the sheriff of the county from entering into an agreement with the chief or other head of a municipal police department of a city to process all applications for licenses, renewals of licenses, or amendments to licenses pursuant to this chapter, in lieu of the sheriff.

(2) This subdivision shall only apply to applicants who reside within the city in which the chief or other head of the municipal police department has agreed to process applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter.

SEC. 11. Section 26155 of the Penal Code is amended to read:

26155. (a) When a person applies for a new license or license renewal to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the chief or other head of a municipal police department of any city or city and county shall issue or renew a license to that person upon proof of all of the following:

(1) The applicant is not a disqualified person to receive such a license, as determined in accordance with the standards set forth in Section 26202.

(2) The applicant is at least 21 years of age, and presents clear evidence of the person's identity and age, as defined in Section 16400.

(3) The applicant is a resident of that city or city and county. Prima facie evidence of residency within the county or a city within the county includes, but is not limited to, the address where the applicant is registered to vote, the applicant's filing of a homeowner's property tax exemption, and other acts, occurrences, or events that indicate presence in the county or a city within the county is more than temporary or transient. The presumption of residency in the county or city within the county may be rebutted by satisfactory evidence that the applicant's primary residence is in another county or city within the county.

(4) The applicant has completed a course of training as described in Section 26165.

(5) The applicant is the recorded owner, with the Department of Justice, of the pistol, revolver, or other firearm for which the license will be issued.

(b) The chief or other head of a municipal police department shall issue or renew a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Nothing in this chapter shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter.

SEC. 12. Section 26162 is added to the Penal Code, to read:

26162. (a) Prior to the issuance of a license, renewal of a license, or amendment to a license, each licensing authority with direct access to the designated Department of Justice system shall determine if the applicant is the recorded owner of the particular pistol, revolver, or other firearm capable of being concealed upon the person reported in the application for a license or the application for the amendment to a license under this chapter.

(b) An agency with direct access to the designated Department of Justice system shall confirm the applicant's information with firearm ownership maintained in the system. An agency without access to the system shall confirm this information with the sheriff of the county in which the agency is located.

SEC. 13. Section 26165 of the Penal Code is amended to read:

26165. (a) For new license applicants, the course of training for issuance of a license under Section 26150 or 26155 may be any course acceptable to the licensing authority that meets all of the following minimum criteria:

(1) The course shall be no less than 16 hours in length.

(2) The course shall include instruction on firearm safety, firearm handling, shooting technique, safe storage, legal methods to transport firearms and securing firearms in vehicles, laws governing where permitholders may carry firearms, laws regarding the permissible use of a firearm, and laws regarding the permissible use of lethal force in self-defense.

(3) The course shall include a component, no less than one hour in length, on mental health and mental health resources.

(4) Except for the component on mental health and mental health resources, the course shall be taught and supervised by firearms instructors certified by the Department of Justice pursuant to Section 31635.

(5) The course shall require students to pass a written examination to demonstrate their understanding of the covered topics.

(6) The course shall include live-fire shooting exercises on a firing range and shall include a demonstration by the applicant of safe handling of, and shooting proficiency with, each firearm that the applicant is applying to be licensed to carry.

(b) A licensing authority shall establish, and make available to the public, the standards it uses when issuing licenses with regards to the required live-fire shooting exercises, including, but not limited to, a minimum number of rounds to be fired and minimum passing scores from specified firing distances.

(c) Notwithstanding subdivision (a), the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(d) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than eight hours, and shall satisfy the requirements of paragraphs (2) to (6), inclusive, of subdivision (a). No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this section, in order for that person to renew a license issued pursuant to this chapter.

(e) The applicant shall not be required to pay for any training courses prior to the initial determination of whether the applicant is a disqualified person pursuant to paragraph (1) of subdivision (d) of Section 26202.

SEC. 14. Section 26170 of the Penal Code is amended to read:

26170. (a) Upon proof of all of the following, the sheriff of a county, or the chief or other head of a municipal police department of any city or city and county, shall issue to an applicant a new license or license renewal to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person:

(1) The applicant is not a disqualified person to receive such a license, as determined in accordance with the standards set forth in Section 26202.

(2) The applicant is at least 21 years of age, and presents clear evidence of the person's identity and age, as defined in Section 16400.

(3) The applicant has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department.

(4) The applicant is the recorded owner, with the Department of Justice, of the pistol, revolver, or other firearm for which the license will be issued, or, the applicant is authorized to carry a firearm that is registered to the agency for which the licensee has been deputized or appointed to serve as a peace officer.

(b) Direct or indirect fees for the issuance of a license pursuant to this section may be waived.

(c) The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this section, and shall not be considered for the purpose of issuing a license pursuant to Section 26150 or 26155.

SEC. 15. Section 26175 of the Penal Code is amended to read:

26175. (a) (1) (A) Applications for licenses and applications for amendments to licenses under this chapter shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(B) Upon the effective date of the act that added this subparagraph, the Attorney General may issue forms to be used for applications for licenses and applications for amendments to licenses under this chapter, in conformance with the act that added this subparagraph, to be used until 60 days after the effective date of the act that added this subparagraph.

(2) The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and, as deemed appropriate, revise the standard application form for licenses prescribed by the Attorney General pursuant to paragraph (1). If the committee does not release a revised application form by 60 days after the effective date of the act that added subparagraph (B) of paragraph (1), the Attorney General has the sole authority to revise the standard application form for licenses. After the initial revised application is issued, if one of the committee's members concludes that further revisions are necessary, that member shall notify the other members of the committee, and the committee shall revise the application within three months of the notification. If the committee fails to release a revised application within that time, the Attorney General has the sole authority to revise the standard application form for licenses.

(3) (A) The Attorney General shall develop a uniform license that may be used as indicia of proof of licensure throughout the state.

(B) The Attorney General shall approve the use of licenses issued by local agencies that contain all the information required in subdivision (i), including a recent photograph of the applicant, and are deemed to be in substantial compliance with standards developed by the committee described in subparagraph (C), if developed, as they relate to the physical dimensions and general appearance of the licenses. The Attorney General shall retain exemplars of approved licenses and shall maintain a list of agencies issuing local licenses. Approved licenses may be used as indicia of proof of licensure under this chapter in lieu of the uniform license developed by the Attorney General.

(C) A committee composed of two representatives of the California State Sheriffs' Association, two representatives of the California Police Chiefs Association, and one representative of the Department of Justice shall convene to review and revise, as the committee deems appropriate, the design standard for licenses issued by local agencies that may be used as indicia of proof of licensure throughout the state, provided that the design standard meets the requirements of subparagraph (B). If the committee does not issue a design standard by 60 days after the effective date of the act that added subparagraph (B) of paragraph (1), the Attorney General has the sole authority to set the design standard for licenses issued by local agencies that may be used as indicia of proof of licensure throughout the state, provided that the design standard meets the requirements of subparagraph (B). After the initial design standard is issued, if one of the committee's members concludes that further revisions are necessary, that member shall notify the other members of the

committee, and the committee shall revise the design standard within three months of the notification. If the committee fails to release a design standard within that time, the Attorney General has the sole authority to revise the design standard for licenses issued by local agencies that may be used as indicia of proof of licensure throughout the state.

(b) The application shall include a section summarizing the requirements of state law that result in the automatic denial of a license.

(c) (1) The standard application form for licenses described in subdivision (a) shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, the applicant's prior detentions, arrests, and criminal convictions, whether the applicant has been the subject of an order listed in paragraph (3) of subdivision (a) of Section 26202 or a valid restraining, protective, or stay-away order issued by an out-of-state jurisdiction pursuant to laws concerning domestic violence, family law, protection of children or elderly persons, stalking, harassment, witness intimidation, or firearm possession, whether the applicant has previously been taken into custody as a danger to self or others under Section 5150 or Part 1.5 (commencing with Section 5585) of Division 5 of the Welfare and Institutions Code, assessed under Section 5151 of the Welfare and Institutions Code, admitted to a mental health facility under Section 5151 or 5152 of the Welfare and Institutions Code, or certified under Section 5250, 5260, or 5270.15 of the Welfare and Institutions Code, whether any licensing authority in this state or elsewhere has previously denied the applicant a license to carry a firearm or revoked such a license for any reason, the names and contact information of three persons willing to serve as references for the applicant, at least one of whom must be a person described in subdivision (b) of Section 273.5, if applicable, and at least one of whom must be the applicant's cohabitant, if applicable, and other information sufficient to make a determination of whether the applicant is a disqualified person pursuant to Section 26202.

(2) In lieu of residence or business addresses, an applicant who participates in the program described in Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code may provide the address designated to the applicant by the Secretary of State.

(3) In lieu of a residence, an applicant who falls within the categories described in subdivision (c) of Section 26220 may provide a business address or an alternative mailing address, such as a post office box.

(d) Completed applications for licenses shall be filed in writing and signed by the applicant, and contain all information required by the application, as determined by the licensing authority.

(e) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to Section 26215 and the reason for desiring the amendment.

(f) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(g) An applicant shall not be required to complete any additional application or form for a license, except to clarify or interpret information provided by the applicant on the standard application form.

(h) The standard application form described in subdivision (a) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(i) (1) As of 60 days after the effective date of the act that added subparagraph (B) of paragraph (1) of subdivision (a), a license issued upon the application shall set forth the licensee's full name, driver's license or identification number, Criminal Identification and Information number, occupation, residence and business address, the licensee's date of birth, height, weight, color of eyes and hair, and indicate the type of license issued as it relates to Section 26220, including license issuance and expiration date, and shall, in addition, contain the licensee's fingerprints, a picture of the licensee, and a description of the weapon or weapons authorized to be carried, detailing the name of the manufacturer, the model, the serial number, and the caliber. The license issued to the licensee may be laminated. Prior to 60 days after the effective date of the act that added subparagraph (B) of paragraph (1) of subdivision (a), any license issued upon the application shall take the form of the uniform license developed by the Attorney General and used as indicia of proof of licensure throughout the state immediately prior to the effective date of the act that added this paragraph.

(2) In lieu of residence or business addresses, a licensee who participates in the program described in Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code may provide the address designated to the applicant by the Secretary of State. Upon termination from the program described in Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, the licensee shall comply with Section 26210.

(3) In lieu of a residence address, a licensee who falls within the categories described in subdivision (c) of Section 26220 may provide a business address or an alternative mailing address, such as a post office box. Upon termination from the category described in subdivision (c) of Section 26220, the licensee shall comply with Section 26210.

SEC. 16. Section 26185 of the Penal Code is amended to read:

26185. (a) (1) Upon issuance of the notice described in paragraph (1) of subdivision (d) of Section 26202, the licensing authority shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice for each applicant applying for a new license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, pursuant to subdivision (u) of Section 11105. The Department of Justice shall provide a state or federal response to the licensing authority, pursuant to subdivision (l) of Section 11105 of the Penal Code. For each applicant for a renewal license, upon issuance of the notice described in paragraph (1) of subdivision (d) of Section 26202, the licensing authority shall submit the renewal notification to the department in a manner prescribed by the department.

(2) Upon receipt of the fingerprints of an applicant for a new license or the notice for a renewal license as prescribed in paragraph (1), as well as the fee as prescribed in Section 26190, the department shall promptly furnish the forwarding licensing authority information as to whether the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. The department shall make this determination in a manner to be prescribed through regulations. If the department is unable to ascertain the final disposition of an arrest or criminal charge, the outcome of the mental health treatment or evaluation, or the applicant's eligibility to possess, receive, own, or purchase a firearm, the department shall notify the forwarding licensing authority. For each applicant for a new license, the department shall also promptly furnish the forwarding licensing authority a criminal history report pertaining to the applicant.

(3) No new license or license renewal shall be issued by any licensing authority unless the report described in paragraph (2) confirms the applicant's eligibility to possess, receive, own, or purchase a firearm.

(b) Notwithstanding subdivision (a), if the license applicant has previously applied to the same licensing authority for a license to carry firearms pursuant to this chapter, the licensing authority shall collect the applicant's fingerprint that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225.

(c) If the license applicant has a license issued pursuant to this chapter and the applicant's fingerprints have been previously forwarded to the Department of Justice, as provided in this section, the licensing authority shall collect the applicant's fingerprint that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225.

(d) For any renewal license applicant referred to the department prior to the effective date of the act that added this subdivision, the department may use any method authorized through regulations implementing paragraph (2) of subdivision (a) to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(e) As used in this section, "licensing authority" means a sheriff of a county, or the chief or other head of a municipal police department of any city or city and county.

SEC. 17. Section 26190 of the Penal Code is amended to read:

26190. (a) (1) An applicant for a new license or for the renewal of a license shall pay at the time of filing the application a fee determined by the Department of Justice. The fee shall not exceed the application processing costs of the Department of Justice for the direct costs of furnishing the information and report required by Section 26185.

(2) After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

(3) The officer receiving the application and the fee shall transmit the fee to the Department of Justice. For applicants for a new license, fingerprints shall be transmitted to the department in accordance with subdivision (a) of Section 26185. For applicants for a renewal license, notice to the department shall be transmitted to the department in accordance with subdivision (a) of Section 26185.

(b) (1) The licensing authority of any city, city and county, or county shall charge an additional fee in an amount equal to the reasonable costs for processing the application for a new license or a license renewal, issuing the license, and enforcing the license, including any required notices, excluding fingerprint and training costs, and shall transmit the additional fee, if any, to the city, city and county, or county treasury.

(2) The first 50 percent of this additional local fee may be collected upon filing of the initial or renewal application. The balance of the fee shall be collected only upon issuance of the license.

(c) These local fees may be increased to reflect increases in the licensing authority's reasonable costs, as described in paragraph (1) of subdivision (b). In no case shall the local fees exceed the reasonable costs to the licensing authority, as described in paragraph (1) of subdivision (b).

(d) (1) In the case of an amended license pursuant to Section 26215, the licensing authority of any city, city and county, or county may charge a fee in an amount not to exceed the reasonable costs to process the amended license. In no case shall the amount charged to the applicant for the amended license exceed the reasonable costs to the licensing authority.

(2) This fee may be increased at a rate to reflect increases in the licensing authority's reasonable costs, as described in paragraph (1) of subdivision (d). In no case shall this fee exceed the reasonable costs to the licensing authority, as described in paragraph (1).

(3) The licensing authority shall transmit the fee to the city, city and county, or county treasury.

(e) (1) If a psychological assessment on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist acceptable to the licensing authority. The applicant may be charged for the actual cost of the assessment. In no case shall the amount charged to the applicant for the psychological assessment exceed the reasonable costs to the licensing authority.

(2) Additional psychological assessment of an applicant seeking license renewal shall be required only if there is compelling evidence of a public safety concern to indicate that an assessment is necessary. The applicant may be charged for the actual cost of the assessment. In no case shall the cost of psychological assessment exceed the reasonable costs to the licensing authority.

SEC. 18. Section 26195 of the Penal Code is amended to read:

26195. (a) A license under this chapter shall not be issued if the Department of Justice determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b) (1) A license under this chapter shall be revoked by the local licensing authority if at any time either the local licensing authority determines or is notified by the Department of Justice of any of the following:

(A) A licensee is prohibited by state or federal law from owning or purchasing a firearm.

(B) A licensee has breached any of the conditions or restrictions set forth in or imposed in accordance with Section 26200.

(C) Any information provided by a licensee in connection with an application for a new license or a license renewal is inaccurate or incomplete.

(D) A licensee has become a disqualified person and cannot receive such a license, as determined in accordance with the standards set forth in Section 26202.

(2) If at any time the Department of Justice determines that a licensee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 26225. The licensee shall also be immediately notified of the revocation in writing.

SEC. 19. Section 26200 of the Penal Code is amended to read:

26200. (a) While carrying a firearm as authorized by a license issued pursuant to this chapter, a licensee shall not do any of the following:

(1) Consume an alcoholic beverage or controlled substance as described in Sections 11053 to 11058, inclusive, of the Health and Safety Code.

(2) Be in a place having a primary purpose of dispensing alcoholic beverages for onsite consumption.

(3) Be under the influence of any alcoholic beverage, medication, or controlled substance as described in Sections 11053 to 11058, inclusive, of the Health and Safety Code.

(4) Carry a firearm not listed on the license or a firearm for which they are not the recorded owner. This paragraph does not apply to a licensee who was issued a license pursuant to Section 26170,

in which case they may carry a firearm that is registered to the agency for which the licensee has been deputized or appointed to serve as a peace officer, and the licensee carries the firearm consistent with that agency's policies.

(5) Falsely represent to a person that the licensee is a peace officer.

(6) Engage in an unjustified display of a deadly weapon.

(7) Fail to carry the license on their person.

(8) Impede a peace officer in the conduct of their activities.

(9) Refuse to display the license or to provide the firearm to a peace officer upon demand for purposes of inspecting the firearm.

(10) Violate any federal, state, or local criminal law.

(b) In addition to the restrictions and conditions listed in subdivision (a), a license issued pursuant to this chapter may also include any reasonable restrictions or conditions that the licensing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which a licensee may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Any restrictions imposed pursuant to subdivision (b) shall be indicated on any license issued.

(d) A licensee authorized to carry a firearm pursuant to this chapter shall not carry more than two firearms under the licensee's control at one time.

SEC. 20. Section 26202 of the Penal Code is repealed.

SEC. 21. Section 26202 is added to the Penal Code, to read:

26202. (a) Unless a court makes a contrary determination pursuant to Section 26206, an applicant shall be deemed to be a disqualified person and cannot receive or renew a license pursuant to Section 26150, 26155, or 26170 if the applicant:

(1) Is reasonably likely to be a danger to self, others, or the community at large, as demonstrated by anything in the application for a license or through the investigation described in subdivision (b), or as shown by the results of any psychological assessment, including, but not limited to, the assessment described in subdivision (e) of Section 26190.

(2) Has been convicted of contempt of court under Section 166.

(3) Has been subject to any restraining order, protective order, or other type of court order issued pursuant to the following statutory provisions, unless that order expired or was vacated or

otherwise canceled more than five years prior to the licensing authority receiving the completed application:

(A) Section 646.91 or Part 3 (commencing with Section 6240) of Division 10 of the Family Code.

(B) Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(C) Sections 136.2 and 18100.

(D) Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure.

(E) Section 213.5, 304, 362.4, 726.5, or 15657.03 of the Welfare and Institutions Code.

(4) In the 10 years prior to the licensing authority receiving the completed application for a new license or a license renewal, has been convicted of an offense listed in Section 422.6, 422.7, 422.75, or 29805.

(5) Has engaged in an unlawful or reckless use, display, or brandishing of a firearm.

(6) In the 10 years prior to the licensing authority receiving the completed application for a new license or a license renewal, has been charged with any offense listed in Section 290, 667.5, 1192.7, 1192.8, or 29805 that was dismissed pursuant to a plea or dismissed with a waiver pursuant to People v. Harvey (1979) 25 Cal.3d 754.

(7) In the five years prior to the licensing authority receiving the completed application for a new license or a license renewal, has been committed to or incarcerated in county jail or state prison for, or on probation, parole, postrelease community supervision, or mandatory supervision as a result of, a conviction of an offense, an element of which involves controlled substances, as described in Sections 11053 to 11058, inclusive, of the Health and Safety Code, or alcohol.

(8) Is currently abusing controlled substances, as described in Sections 11053 to 11058, inclusive, of the Health and Safety Code, or alcohol.

(9) In the 10 years prior to the licensing authority receiving the completed application for a new license or a license renewal, has experienced the loss or theft of multiple firearms due to the applicant's lack of compliance with federal, state, or local law regarding storing, transporting, or securing the firearm. For purposes of this paragraph, "multiple firearms" includes a loss of more than one firearm on the same occasion, or the loss of a single firearm on more than one occasion.

(10) Failed to report a loss of a firearm as required by Section 25250 or any other state, federal, or local law requiring the reporting of the loss of a firearm.

(b) In determining whether an applicant is a disqualified person and cannot receive or renew a license in accordance with subdivision (a) of this section, the licensing authority shall conduct an investigation that meets all of the following minimum requirements:

(1) An in-person interview with the applicant. For renewal applications, the licensing authority may elect to forgo this requirement.

(2) In-person, virtual, or telephonic interviews with at least three character references, at least one of whom must be a person described in subdivision (b) of Section 273.5, if applicable, and at least one of whom must be the applicant's cohabitant, if applicable. For renewal applications, the licensing authority may elect to forgo this requirement.

(3) A review of publicly available information about the applicant, including publicly available statements published or posted by the applicant.

(4) A review of all information provided in the application for a license.

(5) A review of all information provided by the Department of Justice in accordance with Section 26185, as well as firearms eligibility notices or any other information subsequently provided to the licensing authority regarding the applicant.

(6) A review of the information in the California Restraining and Protective Order System accessible through the California Law Enforcement Telecommunications System.

(c) In determining whether an applicant is a disqualified person and cannot receive or renew a license in accordance with subdivision (a), nothing in this section precludes the licensing authority from engaging in investigative efforts in addition to those listed in subdivision (b).

(d) Within 90 days of receiving the completed application for a new license or a license renewal, the licensing authority shall give written notice to the applicant of the licensing authority's initial determination, based on its investigation thus far, of whether an applicant is a disqualified person pursuant to Section 26150, 26155, or 26170 as follows:

(1) If the licensing authority makes an initial determination that, based on its investigation thus far, the applicant is not a disqualified person, the notice shall inform the applicant to proceed with the training requirements specified in Section 26165. The licensing authority shall then submit the applicant's fingerprints or the renewal notification to the Department of Justice in accordance with subdivision (a) of Section 26185.

(2) If, within 90 days of receiving the completed application for a new license or a license renewal, the licensing authority determines that the applicant is not a qualified person, the notice shall inform the applicant that the request for a license has been denied, state the reason as to why the determination was made, and inform the applicant that they may request a hearing from a court, as outlined in Section 26206. A licensing authority providing notice under this paragraph informing the applicant that the request for a license has been denied satisfies the requirement to provide notice of a denial of a license pursuant to Section 26205.

(e) The prohibitions listed in subdivision (a) shall apply whether or not the relevant conduct, order, conviction, charge, commitment, or other relevant action took place or was issued or entered before the effective date of the act that added this subdivision.

SEC. 22. Section 26205 of the Penal Code is amended to read:

26205. (a) Unless otherwise specified in subdivision (b), the licensing authority shall give written notice to the applicant indicating if the license under this chapter is approved or denied. The licensing authority shall give this notice within 120 days of receiving the completed application for a new license or a license renewal, or 30 days after receipt of the information and report from the Department of Justice described in paragraph (2) of subdivision (a) of Section 26185, whichever is later.

(b) In determining whether to approve or deny application for a new license or a license renewal the licensing authority shall apply the statutory requirements in effect as of the date the licensing authority received the completed application for a new license or a license renewal, except for the requirements in former paragraph (2) of subdivision (a) of Sections 26150, 26155, and 26170. For applications submitted prior to the effective date of the act that added this subdivision, the licensing authority shall give written notice to the applicant indicating if the license under this chapter is approved or denied within 120 days of receiving the completed application, or 30 days after receipt of the information and report from the Department of Justice described in paragraph (2) of subdivision (a) of Section 26185, whichever is later.

(c) If the license is denied, the notice shall state which requirement was not satisfied.

SEC. 23. Section 26206 is added to the Penal Code, to read:

26206. (a) If a new license or license renewal pursuant to Section 26150, 26155, or 26170 is denied or revoked based on a determination that the applicant is a disqualified person for such a license, as set forth in Section 26202, the licensing authority shall provide the applicant with the notice of this determination as required under subdivision (d) of Section 26202, Section 26205, or paragraph (3) of subdivision (b) of Section 26195. The notice shall state the reason as to why the determination was made and also inform the applicant that they may request a hearing from a court, as provided in this section, to review the denial or revocation. The licensing authority shall provide the applicant with a copy of the most recent "Request for Hearing to Challenge Disqualified Person Determination" form prescribed by the Department of Justice under this section.

(b) The department shall develop a "Request for Hearing to Challenge Disqualified Person Determination" form for use throughout the state. The form shall include an authorization for the release of the applicant's criminal history records to the appropriate court solely for use in the hearing conducted pursuant to this section. The "Request for Hearing to Challenge Disqualified Person Determination" form is deemed to be a local form expressly exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Except as specified in paragraph (2), an applicant shall have 30 days after the receipt of the notice of denial described in subdivision (a) to request a hearing to review the denial or revocation from the superior court of their county of residence. The request for hearing shall be made on the "Request for Hearing to Challenge Disqualified Person Determination" form prescribed by the department.

(1) Nothing in this section prevents a licensing authority from requiring an applicant to use and exhaust any process for appealing a denial or revocation that may be offered by the licensing authority prior to 30 days after the receipt of the notice of denial described in subdivision (a) before the applicant may request a hearing as described in this subdivision. Licensing authorities that require applicants to use such a process shall resolve any appeal within 60 days of when the appeal is filed.

(2) If an applicant uses and exhausts any process for appealing a denial or revocation that is offered by the licensing authority as described in paragraph (1), an applicant shall have 30 days after receiving notice of an unsuccessful appeal to request a hearing to review the denial or revocation from the superior court of their county of residence. The request for hearing shall be made on the "Request for Hearing to Challenge Disqualified Person Determination" form prescribed by the department.

(d) (1) An applicant who has requested a hearing under this section shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the licensing authority, the department, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Within 14 days after receiving from the clerk of the court the request for a hearing, the department shall file copies of the applicant's criminal history report described in this section with the superior court under seal, and the licensing authority shall file any records or reports on which it relied in denying or revoking the license at issue with the superior court. The licensing authority may also, or instead, file a declaration that summarizes the information it relied upon in denying or revoking the license at issue. The reports filed by the department and the licensing authority shall be disclosed to the person and to the district attorney upon request. The court, upon motion of the applicant establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera, with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public.

(2) The court shall set the hearing within 60 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days.

(3) Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(e) The people shall bear the burden of showing by a preponderance of the evidence that the applicant is a disqualified person in accordance with Section 26202.

(f) If the court finds at the hearing that the people have not met their burden, or if the district attorney declines or fails to go forward in the hearing, the court shall order as follows:

(1) If the applicant was denied a new license or license renewal, the court shall order that the person shall not be deemed a disqualified person to receive a new license or license renewal pursuant to Section 26150, 26155, or 26170, and that the licensing authority issue notice to proceed with the training requirements and submit the applicant's fingerprints or the renewal notification in accordance with paragraph (1) of subdivision (d) of Section 26202. The Department of Justice shall then confirm the applicant's eligibility to possess, receive, own, or purchase a firearm under Section 26185. A copy of the order shall be submitted to the Department of Justice.

(2) If the applicant's license was revoked, the court shall order that the person's license be reinstated with the original expiration date extended by the length of time between the date of the revocation notice provided under paragraph (3) of subdivision (b) of Section 26195 and the date of the court's order so long as the Department of Justice confirms the applicant's eligibility to possess, receive, own, or purchase a firearm in a manner prescribed through regulation. A copy of the order shall be submitted to the Department of Justice.

(g) If the court finds that the people have met their burden to show by a preponderance of the evidence that the applicant is a disqualified person in accordance with Section 26202, the court shall inform the person of their right to file a subsequent application for a license no sooner than two years from the date of the hearing.

(h) If an applicant has been denied a license or had a license revoked based on any ground outlined in Section 26202 two or more times in a 10-year period, which determination was either not challenged or upheld at a hearing under this section, any subsequent hearings under this section for the applicant shall be conducted as described in this section, with the exception that the burden of proof shall be on the applicant to establish by a preponderance of the evidence that the applicant is not a disqualified person in accordance with Section 26202.

(i) If a new license or license renewal pursuant to Section 26150, 26155, or 26170 is denied or revoked based on the applicant's failure to satisfy paragraph (2), (3), (4), or (5) of subdivision (a) of Section 26150, paragraph (2), (3), (4), or (5) of subdivision (a) of Section 26155, or paragraph (2), (3), or (4) of subdivision (a) of Section 26170, the licensing authority shall provide the applicant with the notice required under Section 26205 or paragraph (3) of subdivision (b) of Section 26195, as applicable, and inform the applicant that they may apply to the superior court of the county in which they reside for a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure. Except as specified in paragraph (2), the application for writ of mandate shall be made within 30 days after the receipt of the notice of denial or the notice of revocation.

(1) Nothing in this section prevents a licensing authority from requiring an applicant to use and exhaust any process for appealing a denial or revocation that may be offered by the licensing authority prior to 30 days after the receipt of the notice of denial described in subdivision (a). Licensing authorities that require applicants to use such a process shall resolve any appeal within 60 days of when the appeal is filed.

(2) If an applicant uses and exhausts any process for appealing a denial or revocation that is offered by the licensing authority as described in paragraph (1), an applicant shall have 30 days after receiving notice of an unsuccessful appeal to file the application for writ of mandate described in this subdivision.

SEC. 24. Section 26210 of the Penal Code is amended to read:

26210. (a) When a licensee under this chapter has a change of address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to subdivision (b) of Section 26215.

(b) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence, and within 10 days of receiving that notice, the licensing authority shall notify the Department of Justice of the change in a licensee's place of residence.

(c) If both of the following conditions are satisfied, a license to carry a concealed handgun may not be revoked solely because the licensee's place of residence has changed to another county:

(1) The licensee has not breached any of the conditions or restrictions set forth in the license or imposed in accordance with Section 26200.

(2) The licensee has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(d) Notwithstanding subdivision (c), if a licensee's place of residence was the basis for issuance of a license, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance.

(e) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately upon a change of the licensee's place of residence to another county.

SEC. 25. Section 26220 of the Penal Code is amended to read:

26220. (a) Except as otherwise provided in this section and in subdivision (c) of Section 26210, a license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed two years from the date of the license.

(b) If the licensee's place of employment or business was the basis for issuance of a license pursuant to Section 26150, the license is valid for any period of time not to exceed 90 days from the date of the license, unless the license was issued pursuant to subdivision (d). The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which the licensee resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(c) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(1) A judge of a California court of record.

(2) A full-time court commissioner of a California court of record.

(3) A judge of a federal court.

(4) A magistrate of a federal court.

(d) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5, except that the license shall be invalid upon the conclusion of the person's employment pursuant to Section 831.5 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

(e) A license issued pursuant to Section 26170 to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

SEC. 26. Section 26225 of the Penal Code is amended to read:

26225. (a) A record of the following shall be maintained in the office of the licensing authority:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(b) Copies of each of the following shall be filed immediately by the licensing authority with the Department of Justice, in a manner as prescribed by the Attorney General:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(c) (1) Commencing on or before January 1, 2000, and annually thereafter, each licensing authority shall submit to the Attorney General the total number of licenses issued to peace officers pursuant to Section 26170, and to judges pursuant to Section 26150 or 26155.

(2) The Attorney General shall collect and record the information submitted pursuant to this subdivision by county and licensing authority.

(d) The Department of Justice may adopt emergency regulations for the purpose of implementing Sections 26150 to 26230, inclusive, Section 29805, and Section 31635. The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. Emergency regulations adopted pursuant to this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect no later than two years after the effective date of the act that added this subdivision.

SEC. 27. Section 26230 is added to the Penal Code, to read:

26230. (a) A person granted a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Section 26150, 26155, or 26170 shall not carry a firearm on or into any of the following:

(1) A place prohibited by Section 626.9.

(2) A building, real property, or parking area under the control of a preschool or childcare facility, including a room or portion of a building under the control of a preschool or childcare facility. Nothing in this paragraph shall prevent the operator of a childcare facility in a family home from owning or possessing a firearm in the home if no child under child care at the home is present in the home or the firearm in the home is unloaded, stored in a locked container, and stored separately from ammunition when a child under child care at the home is present in the home so long as the childcare provider notifies clients that there is a firearm in the home.

(3) A building, parking area, or portion of a building under the control of an officer of the executive or legislative branch of the state government, except as allowed pursuant to paragraph (2) of subdivision (b) of Section 171c.

(4) A building designated for a court proceeding, including matters before a superior court, district court of appeal, or the California Supreme Court, parking area under the control of the owner or operator of that building, or a building or portion of a building under the control of the Supreme Court, unless the person is a justice, judge, or commissioner of that court.

(5) A building, parking area, or portion of a building under the control of a unit of local government, unless the firearm is being carried for purposes of training pursuant to Section 26165.

(6) A building, real property, and parking area under the control of an adult or juvenile detention or correctional institution, prison, or jail.

(7) A building, real property, and parking area under the control of a public or private hospital or hospital affiliate, mental health facility, nursing home, medical office, urgent care facility, or other place at which medical services are customarily provided.

(8) A bus, train, or other form of transportation paid for in whole or in part with public funds, and a building, real property, or parking area under the control of a transportation authority supported in whole or in part with public funds.

(9) A building, real property, and parking area under the control of a vendor or an establishment where intoxicating liquor is sold for consumption on the premises.

(10) A public gathering or special event conducted on property open to the public that requires the issuance of a permit from a federal, state, or local government and sidewalk or street immediately adjacent to the public gathering or special event but is not more than 1,000 feet from the event or gathering, provided this prohibition shall not apply to a licensee who must walk through a public gathering in order to access their residence, place of business, or vehicle.

(11) A playground or public or private youth center, as defined in Section 626.95, and a street or sidewalk immediately adjacent to the playground or youth center.

(12) A park, athletic area, or athletic facility that is open to the public and a street or sidewalk immediately adjacent to those areas, provided this prohibition shall not apply to a licensee who must walk through such a place in order to access their residence, place of business, or vehicle.

(13) Real property under the control of the Department of Parks and Recreation or Department of Fish and Wildlife, except those areas designated for hunting pursuant to Section 5003.1 of the Public Resources Code, Section 4501 of Title 14 of the California Code of Regulations, or any other designated public hunting area, public shooting ground, or building where firearm possession is permitted by applicable law.

(14) Any area under the control of a public or private community college, college, or university, including, but not limited to, buildings, classrooms, laboratories, medical clinics, hospitals, artistic venues, athletic fields or venues, entertainment venues, officially recognized university-related organization properties, whether owned or leased, and any real property, including parking areas, sidewalks, and common areas.

(15) A building, real property, or parking area that is or would be used for gambling or gaming of any kind whatsoever, including, but not limited to, casinos, gambling establishments, gaming clubs, bingo operations, facilities licensed by the California Horse Racing Board, or a facility wherein banked or percentage games, any form of gambling device, or lotteries, other than the California State Lottery, are or will be played.

(16) A stadium, arena, or the real property or parking area under the control of a stadium, arena, or a collegiate or professional sporting or eSporting event.

(17) A building, real property, or parking area under the control of a public library.

(18) A building, real property, or parking area under the control of an airport or passenger vessel terminal, as those terms are defined in subdivision (a) of Section 171.5.

(19) A building, real property, or parking area under the control of an amusement park.

(20) A building, real property, or parking area under the control of a zoo or museum.

(21) A street, driveway, parking area, property, building, or facility, owned, leased, controlled, or used by a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission.

(22) A church, synagogue, mosque, or other place of worship, including in any parking area immediately adjacent thereto, unless the operator of the place of worship clearly and conspicuously posts a sign at the entrance of the building or on the premises indicating that licenseholders are permitted to carry firearms on the property. Signs shall be of a uniform design as prescribed by the Department of Justice and shall be at least four inches by six inches in size.

(23) A financial institution or parking area under the control of a financial institution.

(24) A police, sheriff, or highway patrol station or parking area under control of a law enforcement agency.

(25) A polling place, voting center, precinct, or other area or location where votes are being cast or cast ballots are being returned or counted, or the streets or sidewalks immediately adjacent to any of these places.

(26) Any other privately owned commercial establishment that is open to the public, unless the operator of the establishment clearly and conspicuously posts a sign at the entrance of the building or on the premises indicating that licenseholders are permitted to carry firearms on the property. Signs shall be of a uniform design as prescribed by the Department of Justice and shall be at least four inches by six inches in size.

(27) Any other place or area prohibited by other provisions of state law.

(28) Any other place or area prohibited by federal law.

(29) Any other place or area prohibited by local law.

(b) Notwithstanding subdivision (a), except under paragraph (21) or (28) of subdivision (a), a licensee may transport a firearm and ammunition within their vehicle so long as the firearm is locked in a lock box, as defined in subdivision (y) of Section 4082 and subdivision (b) of Section 4094 of Title 11 of the California Code of Regulations, and the lock box is a firearm safety device, as defined in Section 16540, that is listed on the department's Roster of Firearm Safety Devices Certified for Sale pursuant to Sections 23650 and 23655. Nothing in this subdivision is intended to preempt local laws placing more restrictive requirements upon the storage of firearms in vehicles.

(c) Notwithstanding subdivision (a), except under paragraph (21) or (28) of subdivision (a), a licensee prohibited from carrying a concealed firearm into the parking area of a prohibited location specified in subdivision (a) shall be allowed to:

(1) Transport a concealed firearm or ammunition within a vehicle into or out of the parking area so long as the firearm is locked in a lock box.

(2) Store ammunition or a firearm within a locked lock box and out of plain view within the vehicle in the parking area. Nothing in this paragraph is intended to preempt local laws placing more restrictive requirements upon the storage of firearms in vehicles.

(3) Transport a concealed firearm in the immediate area surrounding their vehicle within a prohibited parking lot area only for the limited purpose of storing or retrieving a firearm within a locked lock box in the vehicle's trunk or other place inside the vehicle that is out of plain view.

(d) For purposes of subdivision (c), a lock box is an item as defined in subdivision (b) of Section 4082 and subdivision (y) of Section 4094 of Title 11 of the California Code of Regulations, which is a firearm safety device, as defined in Section 16540, that is listed on the Department's Roster of Firearm Safety Devices Certified for Sale pursuant to Sections 23650 and 23655.

(e) Except in the places specified in paragraph (14) of subdivision (a), a licensee shall not be in violation of this section while they are traveling along a public right-of-way that touches or crosses any of the premises identified in subdivision (a) if the concealed firearm is carried on their person in accordance with the provisions of this act or is being transported in a vehicle by the licensee in accordance with all other applicable provisions of law. Nothing in this section allows a person to loiter or remain in a place longer than necessary to complete their travel.

(f) Nothing in this section shall prohibit the carrying of a firearm where it is otherwise expressly authorized by law.

SEC. 28. Section 29805 of the Penal Code is amended to read:

29805. (a) (1) Except as provided in Section 29855, subdivision (a) of Section 29800, or subdivision (b), any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, subdivision (f) of Section 148.5, Section 171b, paragraph (1) of subdivision (a) of Section 171c, Section 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 422.6, 626.9, 646.9, 830.95, 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 487 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(2) Any person who has an outstanding warrant for any misdemeanor offense described in this subdivision, and who has knowledge of the outstanding warrant, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of Section 273.5, and who subsequently owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) Any person who is convicted on or after January 1, 2020, of a misdemeanor violation of Section 25100, 25135, or 25200, and who, within 10 years of the conviction owns, purchases, receives, or

has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(d) Any person who is convicted on or after January 1, 2023, of a misdemeanor violation of Section 273a, subdivision (b), (c), or (f) of Section 368, or subdivision (e) or (f) of Section 29180, and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(e) Any person who is convicted on or after January 1, 2024, of a misdemeanor violation of paragraph (5), (6), or (7) of subdivision (c) of Section 25400, paragraph (5), (6), or (7) of subdivision (c) of Section 25850, subdivision (a) of Section 26350, or subdivision (a) of Section 26400, and who, within 10 years of the conviction owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 29. Section 30370 of the Penal Code is amended to read:

30370. (a) Commencing July 1, 2019, the department shall electronically approve the purchase or transfer of ammunition through a vendor, as defined in Section 16151, except as otherwise specified. This approval shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition. Pursuant to the authorization specified in paragraph (1) of subdivision (c) of Section 30352, the following persons are authorized to purchase ammunition:

(1) A purchaser or transferee whose information matches an entry in the Automated Firearms System (AFS) and who is eligible to possess ammunition as specified in subdivision (b).

(2) A purchaser or transferee who has a current certificate of eligibility issued by the department pursuant to Section 26710.

(3) A purchaser or transferee who is not prohibited from purchasing or possessing ammunition in a single ammunition transaction or purchase made pursuant to the procedure developed pursuant to subdivision (c).

(b) To determine if the purchaser or transferee is eligible to purchase or possess ammunition pursuant to paragraph (1) of subdivision (a), the department shall cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other

government identification number, as described in Section 28180, with the information maintained in the AFS. If the purchaser's or transferee's information does not match an AFS entry, the transaction shall be denied. If the purchaser's or transferee's information matches an AFS entry, the department shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing with the Prohibited Armed Persons File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.

(c) The department shall develop a procedure in which a person who is not prohibited from purchasing or possessing ammunition may be approved for a single ammunition transaction or purchase. The department shall recover the cost of processing and regulatory and enforcement activities related to this section by charging the ammunition transaction or purchase applicant a fee not to exceed the fee charged for the department's Dealers' Record of Sale (DROS) process, as described in Section 28225, as it read on December 31, 2019, and not to exceed the department's reasonable costs.

(d) A vendor is prohibited from providing a purchaser or transferee ammunition without department approval. If a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an Internet connection, the department shall provide a telephone line to verify eligibility. This option is available to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in submitting the information electronically and who are approved by the department to use the telephone line verification.

(e) The department shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar ($1), provided, however, that the fee may be increased at a rate not to exceed any increases in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations, not to exceed the reasonable regulatory and enforcement costs.

(f) A fund to be known as the "Ammunition Safety and Enforcement Special Fund" is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating, and enforcing the ammunition authorization program provided for in this section and Section 30352 and for repaying the start-up loan provided for in Section 30371.

(g) The Department of Justice is authorized to adopt regulations to implement this section.

SEC. 30. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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 27, 2023
Counsel: Andrew Ironside

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

SB 46 (Roth) – As Amended May 18, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the county drug program administrator and representatives of the court, with input from the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment. Specifically, **this bill:**

1) Requires a person convicted of a controlled substance offense, for which they are granted probation, to complete successfully an approved controlled substance education or treatment program, as specified, as opposed to requiring that person to secure education and treatment from a local community agency.

2) Defines "complete successfully" as completing the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court.

3) Provides that "complete successfully" shall not require cessation of narcotic replacement therapy.

4) Removes from the definition of "successful completion of treatment" the requirement that "there is reasonable cause to believe that the defendant will not abuse controlled substances in the future."

5) Requires the court, when referring a person to substance education or treatment program, to determine the defendant's ability to pay and to develop a sliding fee schedule for the program based on the defendant's ability to pay, which may relieve a person from paying for the program if they meet specified criteria.

6) Requires the county drug program administrator and representatives of the court, with input from the county probation department and substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment programs.

7) Requires the court or the probation department to refer defendants only to controlled substance education or treatment programs that follow specified standards.

8) Requires the controlled substance education and treatment program to be based on the best available current science and evidence and provide education resources on the pathology of addiction and existing treatment modalities.

9) Requires controlled substance education or treatment programs to include education about how the use of controlled substances affects the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances unless under appropriate medical supervision.

10) Requires the education to be culturally and linguistically appropriate.

11) Provides that the education may include, without limitation, informing program participants about the physical and mental health risks associated with substance use disorders, the grave health risk to those who are exposed to controlled substances, and the extreme danger to human life when manufactured or distributed.

12) Requires the court to recommend in writing that a defendant convicted of a felony for a controlled substance offense, for which the defendant is sentenced to state prison, participate in a controlled substance education or treatment program while imprisoned.

13) Requires the court to recommend in writing that a defendant convicted of a felony for a controlled substance offense, for which the defendant is sentenced to county jail but for which the court has not ordered suspension of the execution of the term of imprisonment, participate in a controlled substance education or treatment program while imprisoned.

14) States that the goal of controlled substance education or treatment is to save lives and reduce the risks associated with drug use, including the manufacture and distribution of controlled substances, and to reduce the recidivism that occurs from the use of controlled substances.

15) Removes the requirement that, when a minor is granted probation for a controlled substance offense, the court order the juvenile's parents or guardian to participate in the education and treatment to the extent the court determines that participation will aid the education or treatment of the minor.

16) Removes the requirement that, when a minor is found by a juvenile court to have been in possession of any controlled substance, the juvenile court order the minor to receive education or treatment from a local community agency designated by the court, if the services is available and the minor is likely to benefit from the service.

EXISTING LAW:

1) Requires the trial court, whenever a person is granted probation after conviction for a violation of a controlled substance offense, to order as a condition of probation that the person secure education or treatment from a local community agency designated by the court, if the service is available and the person is likely to benefit from the service. (Health & Saf. Code, §11373, subd. (a).)

2) Requires the trial court, when the defendant granted probation is a minor, to order their parents or guardian to participate in the education or treatment to the extent the court determines that participation will aid the education or treatment of the minor. (Health & Saf. Code, §11373, subd. (a).)

3) Provides that the willful failure to complete a court ordered education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for specified controlled substance offenses. (Health & Saf. Code, §11373, subd. (b).)

4) Provides that the failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavailability to the defendant of appropriate programs is not a willful failure to complete the program. (Health & Saf. Code, §11373, subd. (b).)

5) Provides that a person who possesses a controlled substance, as specified, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be imprisoned in a county jail for not more than one year. (Health & Saf. Code, § 11350, subd. (a).)

6) Provides that a court may not deny a defendant probation because of their inability to pay the fine for specified controlled substance offenses. (Health & Saf. Code, § 11350, subd. (b).)

7) Provides that it is unlawful for a person other than the prescription holder to possess a controlled substances if both of the following apply:

   a) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder; and,

   b) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner. (Health & Saf. Code, § 11350, subd. (d)(1)-(2).)

8) Prohibits the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription. (Health & Saf. Code, § 11350, subd. (e).)

9) Provides that it is unlawful to visit or to be in any room or place where any controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring. (Health & Saf. Code, § 11365, subd. (a).)

10) Provides that every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison. (Health & Saf. Code, § 11366.)

11) Provides that a person who possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment shall be punished by imprisonment in a county jail for a term of imprisonment not to exceed one year. (Health & Saf. Code, § 11366.8, subd. (a).)

12) Provides that every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison. (Health & Saf. Code, §

11368.)

13) Provides that a person who obtains or has possession of any narcotic drug secured by a forged, fictitious, or altered prescription shall be punished be imprisonment in county jail for not less than six months nor more than one year, or in the state prison. (Health & Saf. Code, § 11368.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "In 2021, more than 71,000 people died from synthetic opioid-related drug overdose in the United States according to provisional data from the Centers for Disease Control and Prevention (CDC). Recent data suggests that number continues to increase each year. Similarly, based on preliminary 2021 data from the California Department of Health, there were 6,843 opioid-related overdose deaths in California; 5,722 of which were related to fentanyl.

   "Without better education and treatment programs, our communities will lack the tools they need if they are to positively impact individuals battling substance use disorders. Similarly, we need to educate those selling drugs as well, since often times these folks unknowingly distribute drugs containing fentanyl. Now more than ever, the state must adopt the policies necessary to support the rehabilitation of those suffering from this epidemic. If we as a state are serious about the commitment to correct and rehabilitate, specific and intentional education and treatment must be required to reduce recidivism and ensure long term success. The ambiguity in existing law creates barriers for probationers and divertees at a time when clarity and structure is most imperative. SB 46 is a crucial step forward if we are to meet those objectives and save more lives."

2) **Drug Overdose Rates in California:** Following the nationwide trend, opioid related overdoses in California have risen dramatically over the last decade. In 2018, emergency room visits related to any opioid overdose totaled 8,832, and opioid related overdose deaths totaled 2,428. (CDPH, Injury and Violent Prevention (IVP) Branch, Overdose Prevention Initiative (OPI) <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx> [last visited Mar. 7, 2022.] ("OPI").) Two years later, those numbers had roughly doubled, with 16,537 emergency room visits related to opioid overdoses and 5,502 deaths related to opioid overdose in 2020. (CDPH, California Overdose Surveillance Dashboard <https://skylab.cdph.ca.gov/ODdash/> [last visited Mar. 7, 2022].) A significant contributor to this increase is fentanyl, a synthetic opioid used to treat severe pain. Between 2012 and 2018, fentanyl overdose deaths increased by more than 800%—from 82 to 786. (OPI, supra.) In 2020, there were 3,946 deaths related to fentanyl overdoes. That number increased to 5,961 in 2021. (CDPH, California Overdose Surveillance Dashboard, *supra.*) Overdose rates related to other controlled substances have increased as well. (Ibid.)

3) **Probation for Drug Offenses:** Current law requires a trial court to order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be

granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

4) **Changes to Existing Law:** This bill makes a number of changes to existing law. First, this bill requires the defendant to complete successfully, rather than to simply secure, an education or treatment program and would eliminate language regarding whether the defendant is likely to benefit from the service. This bill defines "complete successfully" to mean that a defendant who has had controlled substance education or treatment imposed as a condition of probation has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court, and specifies that completion of education or treatment does not require cessation of narcotic replacement therapy.

   This bill additionally requires a controlled substance education and treatment program to be based on the best available current science and evidence and provide educational resources on the pathology of addiction and existing treatment modalities. It requires the court to refer defendants only to education or treatment programs that include specified controlled substance education standards, including education about how drugs affect the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances, unless under appropriate medical supervision, and requires such education to be culturally and linguistically appropriate.

   This bill also amends the current definition of "successful completion of treatment" to remove the following language: "and, as a result, reasonable cause to believe that the defendant will not abuse controlled substances in the future."

5) **Argument in Support:** According to the *California District Attorneys Association*, "The Nation, including California, is facing a major overdose epidemic, mostly driven by the dangerous opioid fentanyl. Indeed, fentanyl was the number one cause of death last year for people ages 18-45, outpacing suicides and COVID-19. While current law requires probationers and diverted individuals to complete education and treatment programs, the definition and scope of these programs are vague and undefined, leaving many probationers and diverted individuals without much help, education, or treatment options. SB 46 would provide probationers and diverted individuals with access to treatment programs adhering to specified standards and provide much-needed education about the extreme dangers of controlled substances, including fentanyl."

6) **Argument in Opposition:** According to *Pacific Juvenile Defender Center*, "Current law requires the court to order substance abuse treatment if the youth is found to have been in possession of any controlled substance, but allows the court discretion not to do so if the young person is not likely to benefit from such treatment. S.B. 46 would remove this discretion from the court even where the court finds that such treatment would not benefit the youth. This cookie cutter one size fits all solution is contrary to the very function of the juvenile court—to provide individualized dispositions that serve to rehabilitate the youth. Thus, if a court hears evidence that a youth has been testing negative for drugs for a year, or

was in possession of a pill that someone had given them to increase focus for a test but decided not to take it, or had already since arrest completed a treatment plan, the court might determine it is not necessary to order further treatment. Under the proposed amendments, in each of those cases the courts would be bound to order treatment that can be costly for families, and take time away from schooling, sports, or prosocial activities the youth is engaged in.

"S.B. 46 *does* allow the court to forego ordering *the parent or guardian* to participate 'to the extent the juvenile court determines that participation will not aid the education or treatment of the minor.' This same discretion should apply to any order for treatment directed to the youth.

"S.B. 46 is also problematic in explicitly tying successful completion to completion of the course of treatment 'as recommended by the treatment provider and ordered by the court.' If a treatment provider recommends one year of treatment, but the court determines that the youth has completed nine months and has gained insight, tested negatively, and improved in other areas of behavior, the court should be able to find successful completion. PJDC is concerned that there may be an unintended negative impact on the ability of youth to have their records sealed automatically for satisfactory completion of probation if the provider has recommended a lengthier course of treatment and the court is thereby barred from finding successful completion.

"In California, we continue to move towards a health-based approach and innovation in juvenile justice treatment. The amendments proposed in S.B. 46 which reduce the discretion of juvenile court judges to tailor dispositions to the individual child's circumstances, are a step backwards. They tie the hands of juvenile judges, who are in the best position to determine the needs of children and families, with whom they often become familiar over a period of years. While we recognize the significant and devastating human toll of substance abuse, we believe that treatment—particularly for youth—must be tailored to the particular needs of the individual child, taking account of his or her individual circumstances."

7) **Related Legislation:**

a) AB 697 (Davies), would establish the Drug Court Success Incentives Pilot Program, which would authorize the Counties of Sacramento, San Diego, and Solano to offer up to $500 per month of supportive services to adult defendants who participate in the county's drug court to encourage participation in, and successful completion of, drug court. AB 697 was held in the Assembly Appropriations Committee in the Suspense File.

b) AB 890 (Joe Patterson), would require a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program. Requires the California Department of Public Health to approve, oversee, and develop statewide standards for the education program. AB 890 is pending hearing in the Senate Public Safety Committee.

c) AB 1186 (Bonta), would remove the requirement that a minor ordered by the juvenile court to complete a sex offender treatment program must pay the reasonable costs of the program and provides that the minor or the minor's parent or guardian shall not be responsible for the cost of the program. AB 1186 is pending hearing in the Senate Public

Safety Committee.

d) AB 1360 (McCarty), would authorize the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated felony crimes. AB 1360 is pending hearing in the Senate Public Safety Committee.

8) Prior Legislation:

a) SB 904 (Bates), of the 2021-2022 Legislative Session, was nearly identical to this bill. SB 904 was held in the Assembly Appropriations Committee in the Suspense File.

b) AB 1750 (Davies), would have required probation departments to design and implement approval and renewal processes for controlled substance education or treatment programs, and would require those programs to include education about the dangers of controlled substances. AB 1750 was held in the Assembly Appropriations Committee in the Suspense File.

c) AB 1928 (McCarty), would have authorized the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders who have been convicted of drug-motivated felony crimes. AB 1928 was held in the Assembly Appropriations Committee in the Suspense File.

d) AB 644 (Waldron), Chapter 59, Statutes of 2021, changed the existing requirement for the California MAT Re-Entry Incentive Program that a person participate in an institutional substance abuse program in order to be eligible for a reduction to the period of parole to a requirement that the person has been enrolled or participated in a post-release substance abuse program.

e) AB 653 (Waldron), Chapter 745, Statutes of 2021, established the MAT Grant Program, in order for the Board of State and Community Corrections to award grants to counties for purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment.

f) AB 1304 (Waldron), Chapter 325, Statutes of 2020, required a person to participate in a post-release substance abuse program rather than an institutional substance abuse program in order to be eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals

California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Pacific Juvenile Defender Center
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

Pacific Juvenile Defender Center

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

Amended Mock-up for 2023-2024 SB-46 (Roth (S))

Mock-up based on Version Number 96 - Amended Senate 5/18/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Section 11373 of the Health and Safety Code is amended to read:

11373. (a) (1) When a person who is otherwise eligible for probation is granted probation by the trial court or sentenced pursuant to subdivision (h) of Section 1170 of the Penal Code, after conviction for a violation of any controlled substance offense under this division, the trial court shall, as a condition of probation ~~or mandatory supervision~~, order that person to complete successfully a controlled substance education or treatment program, as appropriate for the individual, approved pursuant to subdivision (c), or if none is available, from a local community agency designated by the court.

(2) For purposes of this section, "complete successfully" means that a defendant who has had controlled substance education or treatment imposed as a condition of probation ~~or mandatory supervision~~ has completed the prescribed course of controlled substance education or treatment as recommended by the treatment provider and ordered by the court. Completion of education or treatment shall not require cessation of narcotic replacement therapy.

(3) When referring a person pursuant to this subdivision, the court shall determine the defendant's ability to pay. If the court finds that the defendant is financially unable to pay, the court may develop a sliding fee schedule for the program based on the defendant's ability to pay. A person who meets the criteria set forth in Section 68632 of the Government Code shall not be responsible for any costs.

(b) The willful failure to complete a court-ordered controlled substance education or treatment program shall be a circumstance in aggravation for purposes of sentencing for any subsequent prosecution for a violation of Section 11353, 11354, or 11380. The failure to complete an education or treatment program because of the person's inability to pay the costs of the program or because of the unavailability to the defendant of appropriate programs is not a willful failure to complete the program for the purposes of this section.

(c) (1) The court or the probation department shall refer defendants only to controlled substance education or treatment programs that follow standards outlined in paragraph (2), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The county

drug program administrator and representatives of the court, with input from the county probation department and substance use treatment providers, shall design and implement an approval and renewal process for controlled substance education or treatment programs.

(2) A controlled substance education and treatment program shall be based on the best available current science and evidence and provide educational resources on the pathology of addiction and existing treatment modalities. The goal of a controlled substance education or treatment program shall be to save lives and reduce the risks associated with drug use, including the manufacture and distribution of controlled substances, and to reduce the recidivism that occurs from the use of controlled substances. As such, a controlled substance education or treatment program shall include education about how the use of controlled substances affects the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances, unless under appropriate medical supervision. Such education shall be culturally and linguistically appropriate and may include, but is not limited to, informing program participants about the physical and mental health risks associated with substance use disorders, the grave health risk to those who are exposed to controlled substances and the extreme danger to human life when manufactured or distributed.

(d) Upon conviction of any felony in which the defendant is sentenced to state prison for a violation of any controlled substance offense under this division, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a controlled substance education or treatment program while imprisoned that complies with the standards outlined in paragraph (2) of subdivision (c).

(e) Upon conviction of any felony in which the defendant is sentenced pursuant to subdivision (h) of Section 1170 of the Penal Code and the court does not order suspension of the execution of the term of imprisonment pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170 of the Penal Code, for a violation of any controlled substance offense under this division, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a controlled substance education or treatment program while imprisoned that complies with the standards outlined in paragraph (2) of subdivision (c).

SEC. 2. Section 1210 of the Penal Code is amended to read:

1210. As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code, the following definitions apply:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed or certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services. The term "drug treatment program" or "drug treatment" includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001. That type of program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Completion of treatment shall not require cessation of narcotic replacement therapy.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in (1).

SEC. 3. Section 1211 of the Penal Code is amended to read:

1211. (a) In order to ensure the quality of drug diversion programs provided pursuant to this chapter and Chapter 2.5 (commencing with Section 1000) of Title 6, and to expand the availability of these programs, the county drug program administrator in each county, in consultation with representatives of the court and the county probation department, shall establish minimum requirements, criteria, and fees for the successful completion of drug diversion programs, which shall be approved by the county board of supervisors no later than January 1, 1995. These minimum requirements shall include, but not be limited to, all of the following:

(1) An initial assessment of each divertee, which may include all of the following:

(A) Social, cultural, linguistic, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Drug history and previous treatment.

(2) A minimum of 20 hours of either effective education or counseling or any combination of both for each divertee. The education and counseling program shall include education about how the

use of controlled substances affects the body and brain, factors that contribute to physical dependence, how to recognize and respond to the signs of drug overdose, and the dangers of using controlled substances unless under appropriate medical supervision. This education shall be culturally and linguistically appropriate and may include, but is not limited to, informing program participants about the physical and mental health risks associated with substance use disorders, the grave health risk to those who are exposed to controlled substances and the extreme danger to human life when controlled substances are manufactured and distributed.

(3) An exit conference which shall reflect the divertee's progress during their participation in the program.

(4) Fee exemptions for persons who cannot afford to pay.

(b) The county drug program administrator shall implement a certification procedure for drug diversion programs.

(c) The county drug program administrator shall recommend for approval by the county board of supervisors programs pursuant to this chapter. No program, regardless of how it is funded, may be approved unless it meets the standards established by the administrator, which shall include, but not be limited to, all of the following:

(1) Guidelines and criteria for education and treatment services, including standards of services that may include lectures, classes, group discussions, and individual counseling. However, any class or group discussion other than lectures shall not exceed 15 persons at any one meeting.

(2) Established and approved supervision, either on a regular or irregular basis, of the person for the purpose of evaluating the person's progress.

(3) A schedule of fees to be charged for services rendered to each person under a county drug program plan in accordance with the following provisions:

(A) Fees shall be used only for the purposes set forth in this chapter.

(B) Fees for the treatment or rehabilitation of each participant receiving services under a certified drug diversion program shall not exceed the actual cost thereof, as determined by the county drug program administrator according to standard accounting practices.

(C) Actual costs shall include both of the following:

(i) All costs incurred by the providers of diversion programs.

(ii) All expenses incurred by the county for administration, certification, or management of the drug diversion program in compliance with this chapter.

(d) The county shall require, as a condition of certification, that the drug diversion program pay to the county drug program administrator all expenses incurred by the county for administration, certification, or management of the drug diversion program in compliance with this chapter. No fee shall be required by any county other than that county where the program is located.

SEC. 4. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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 27, 2023
Counsel: Andrew Ironside

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

SB 58 (Wiener) – As Amended June 20, 2023

As Proposed to be Amended in Committee

SUMMARY: Makes lawful the possession for personal use of specified hallucinogenic substances by persons 21 years of age or older, and would make lawful the facilitated and supported use of these substances once the state develops a regulatory framework for these activities. Specifically, **this bill**:

1) Defines mescaline as derived from plants presently classified botanically in the Echinopsis or Trichocereus genus of cacti, including, without limitation, the Bolivian Torch Cactus, San Pedro Cactus, or Peruvian Torch Cactus, but not including mescaline derived from any plant defined as peyote.

2) Provides that, except as otherwise prohibited, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

   a) The possession, preparation, obtaining, or transportation of no more than the allowable amount of mescaline for person use or for facilitated or supported use;

   b) The ingesting of mescaline;

   c) The possession, planting, cultivating, harvesting, or preparation of plants capable of producing mescaline, except for the plant presently classified botanically as Lophophora williamsii Lemaire, on property owned by a person, for specified purposes, and possession of any product produced by those plants; and,

   d) The assisting of another person, 21 years of age or older, with the above acts.

3) Provides that the following conduct involving mescaline is unlawful and subject to the following penalties:

   a) Possession of mescaline by a person 21 years of age or older on the grounds of any school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, is a misdemeanor punishable by up to six months in the county jail;

   b) Knowingly giving away or administering mescaline to a person who is under 18 years of age is a misdemeanor punishable by imprisonment in a county jail for a period of not more than six months or by a fine of not more than $500, or both, or as a felony punishable by imprisonment in the county jail for up to three years;

c) A person 18 years of age or over who knowingly giving away or administering mescaline to a minor under 14 years of age is a felony punishable in state prison for a period of three, five, or seven years;

d) Knowingly giving away or administering mescaline to a person who is at least 18 years of age, but under 21 years of age, is punishable as an infraction;

e) Possession of mescaline by a person under 18 years of age is punishable as an infraction and requires the minor to complete either:

i) Four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or counseling services are made available to them for a first offense; or,

ii) Six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them for a second or subsequent offense; and,

f) Possession of mescaline by a person at least 18 years of age but less than 21 years of age is punishable as an infraction.

4) Specifies that all of the following acts involving DMT, ibogaine, psilocybin, and psilocin, are lawful for a person 21 years of age or older, except as otherwise specified by the provisions of this bill:

a) The possession, processing, obtaining, or transportation of DMT, ibogaine, psilocybin, and psilocyn for personal use or for facilitated and supported use;

b) The ingesting of DMT, ibogaine, psilocybin, and psilocin;

c) The possession, planting, cultivating, harvesting, or processing of plants capable of producing of DMT, ibogaine, psilocybin, and psilocin on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn for that purpose; and,

d) The assisting of another person, 21 years of age or older, with the above acts.

5) Applies the same criminal penalties with respect to DMT, ibogaine, psilocybin, and psilocin as apply to mescaline under the provisions of this bill, specified above.

6) Defines "allowable amount" as the following quantities of a substance per person or, in the context of facilitated or supported use involving multiple persons, the aggregate of the allowable amounts per participant:

a) Four grams of mescaline;

b) Two grams of DMT;

c) Fifteen grams of ibogaine;

d) Two grams of psilocybin or four ounces of a plant or fungi containing psilocybin; and,

e) Two grams of psilocin or four ounces of a plant or fungi containing psilocin.

7) Provides that "allowable amount" does not include the weight of any material of which the substance is a part or to which the substance is added, dissolved, held in solution, or suspended, or any ingredient or material combined with the substance specified in this subdivision to prepare a topical or oral administration, food, drink, or other product, including, but not limited to, a brew or tea.

8) Defines "facilitated or supported use" as the supervised or assisted personal use of mescaline by an individual or group of persons 21 years of age or older, or the assisting or supervising of such persons in such use, within the context of spiritual guidance, community-based healing, or related services.

9) Defines "financial gain" as the receipt of money or other valuable consideration in exchange for the item being shared. Provides that "financial gain" does not include reasonable fees for spiritual guidance or related services that are provided in conjunction with administering or use of mescaline under the guidance and supervision, and on the premises, of the person providing those services.

10) Defines "personal use" as for the personal ingestion or other personal and noncommercial use by the person in possession.

11) Defines "preparation" as processing or otherwise preparing for use.

12) Provides that implementation related to facilitated and supported use and related activities shall not be lawful until such time as a regulatory framework governing the therapeutic use, including facilitated and supported use, of mescaline, DMT, ibogaine, psilocybin, and psilocin has been developed and adopted.

13) Provides that mescaline, DMT, ibogaine, psilocybin, and psilocin, or related products involved in any way with conduct deemed lawful are not contraband nor subject to seizure, and prohibits lawful conduct from constituting the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

14) Provides that criminal penalties related to drug paraphernalia does not apply to paraphernalia that is intended to be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body DMT, ibogaine, mescaline, psilocybin, or psilocin.

15) Includes a legislative declaration that this bill lays the groundwork for the state to develop a regulated therapeutic access program for psychedelic plants and fungi.

16) Makes technical and conforming changes.

17) Makes other legislative findings and declarations.

EXISTING FEDERAL LAW:

1) Provides that it shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or as otherwise specified. (21 U.S.C. § 844)

2) Provides that is unlawful to knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, **or** using any controlled substance. (21 U.S.C. § 856, subd. (a).)

3) Provides that it is unlawful to manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. (21 U.S.C. § 856, subd. (b).)

EXISTING STATE LAW:

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

2) Classifies several hallucinogenic substances including DMT, ibogaine, LSD, mescaline, psilocybin, and psilocyn as Schedule I substances. (Health & Saf. Code, § 11054, subd. (d).)

3) Provides that, upon change in federal law permitting the prescription, furnishing, or dispensing of a cannabidiol product, a physician, pharmacist, or other authorized healing arts licensee acting within his or her scope of practice who prescribes, furnishes, or dispenses a cannabidiol product in accordance with federal law, shall be deemed to be in compliance with state law. (Health & Saf. Code, § 11150.2, subd. (a).)

4) Prohibits the possession of several specified controlled substances. (Health & Saf. Code, § 11350, subd. (a).)

5) Makes it is unlawful to possess any device, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances, except as specified. (Health & Saf. Code, § 11364, subd. (a).)

6) Makes it unlawful for any person to deliver, furnish, or transfer, possess with intent to deliver, furnish, or transfer, or manufacture with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain,

conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. (Health & Saf. Code, § 11364.7.)

7) Provides that it is unlawful to visit or to be in any room or place where specified controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring. (Health & Saf. Code, § 11365, subd. (a).)

8) Provides that the possession of methamphetamine and other specified controlled substances is unlawful. (Health & Saf. Code, § 11377, subd. (a).)

9) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport specified controlled substances. (Health & Saf. Code, § 11379.)

10) Makes it unlawful for a person to agree, consent, or in any manner offer to unlawfully sell, furnish, transport, administer, or give specified controlled substances. (Health & Saf. Code, § 11382.)

11) Provides that it is unlawful to be under the influence of specified controlled substances. (Health & Saf. Code, § 11550, subd. (a).)

12) Makes it unlawful for a person who, with the intent to produce psilocybin or psilocyn, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance. (Health & Saf. Code, § 11390.)

13) Makes it unlawful to transport, import into this state, sell, furnish, gives away, or offer to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn. (Health & Saf. Code, § 11391.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Senate Bill 58, backed by a broad coalition of veterans, decriminalizes the possession and personal use of certain plant-based psychedelic drugs, specifically, psilocybin, psilocyn, dimethyltryptamine ("DMT"), mescaline, and ibogaine, for people 21 years and older. For California's veterans, psychedelics have especially promising healing potential. Studies indicates that for veterans, many of whom live with PTSD, access to psychedelics can be effective in treating the sort of acute trauma they face, and may even save their life. Many veterans who have used psychedelic medicines to treat their PTSD report that without this treatment, they would have taken their life.

   "Growing scientific evidence shows that these substances have therapeutic benefits. In recent years, the California cities of Oakland, San Francisco, and Santa Cruz, as well as Washington, D.C., have passed resolutions decriminalizing plant-based psychedelics. In

2020, Oregon voters approved two ballot measures that decriminalize the personal use of all scheduled substances, and authorized the creation of a state-licensed, psilocybin-assisted therapy program over the next two years. In 2022, Colorado voters approved a ballot measure to decriminalize the noncommercial, personal possession of psychedelic plants and fungi.

"Criminalizing people for the possession or use of controlled substances is a failed policy approach, as it does not improve public safety, deter use, or help people who may be experiencing substance use disorder. With thousands of Californians struggling with often treatment-resistant mental health issues, now more than ever, it is time that California takes this step to ensure that people have access to the substances that they need, without the fear of being criminalized for using them."

2) **Hallucinogens:** Hallucinogens are a diverse group of drugs that alter a person's perception or awareness of their surroundings. Some hallucinogens are found in plants and fungi and some are synthetically produced. According to the National Institute on Drug Abuse, hallucinogens are commonly split into two categories: classic hallucinogens and dissociative drugs. Both types can cause hallucinations, and dissociative drugs can cause the user to feel disconnected from their body or environment. Hallucinogens can be consumed in a variety of ways, including swallowed as tablets, pills, or liquid, consumed raw or dried, snorted, injected, inhaled, vaporized, smoked, or absorbed through the lining of the mouth using drug-soaked pieces of paper. Common hallucinogens include LSD, DMT, psilocybin, peyote, mescaline, and ketamine.

Many hallucinogenic substances, including LSD, DMT, mescaline, and psilocybin are classified as Schedule I substances under the state's Uniform Controlled Substances Act. Schedule I substances are defined as those controlled substances having no medical utility and that have a high potential for abuse. There is research, however, that indicates that many of these substances have therapeutic benefits. (See Davis et. al, *Effects of Psilocybin-Assisted Therapy on Major Depressive Disorder*, JAMA Psychiatry (2020) <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2772630> [las of June 22, 203]; D'Souza et al., *Exploratory Study of the Dose-Related Safety, Tolerability, and Efficacy of Dimethyltryptamine (DMT) in Healthy Volunteers and Major Depressive Disorder*, Neuropsychopharmacol (2022) <https://www.nature.com/articles/s41386-022-01344-y > [as of June 22, 2023]; Köck et al., *A Systematic Literature Review of Clinical Trials and Therapeutic Applications of Ibogaine*, Journal of Substance Abuse Treatment (2022), <https://www.sciencedirect.com/science/article/pii/S0740547221004438> [as of June 22, 2023].)

In recent years, the U.S. Federal Drug Administration (FDA) has designated psilocybin as a "breakthrough therapy" to treat severe depression. (Saplakoglu, *FDA Calls Psycheelic Psilocybin a 'Breakthrough Therapy' for Severe Depression*, Live Science (Nov. 25, 2019) <https://www.livescience.com/psilocybin-depression-breakthrough-therapy.html> [as of June 22, 2023].) The "breakthrough therapy" designation is "a process designed to expedite the development and review of drugs that are intended to treat a serious condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over available therapy on a clinically significant endpoint." (<https://www.fda.gov/patients/fast-track-breakthrough-therapy-accelerated-approval-priority-review/breakthrough-therapy> [as of June 22, 2023].)

3) **Reform Efforts Related to Hallucinogens:** This bill would makes lawful the possession for personal use of specified hallucinogenic substances by persons 21 years of age or older. It would also make lawful the facilitated and supported use of these substances once the state develops a regulatory framework for these activities.

Local and statewide efforts to deprioritize the policing or prosecution of conduct related to certain hallucinogens and to acknowledge the therapeutic value of hallucinogens have gained support in recent years. In 2019, voters in Denver approved a measure to make the personal use and possession of psilocybin by adults 21 years of age and older the lowest law enforcement priority and to prohibit the city from spending resources to impose criminal penalties related to such conduct. (Tom Angell, *Denver Voters Approve Measure to Decriminalize Psychedelic Mushrooms* (May 8, 2019) <https://www.forbes.com/sites/tomangell/2019/05/08/denver-voters-approve-measure-to-decriminalize-psychedelic-mushrooms/?sh=395f4b313ddc> [as of June 22, 2023].) That same year, the Oakland City Council passed a resolution prohibiting the use of city funding "to assist in the enforcement of laws imposing criminal penalties for the use and possession of entheogenic plants by adults" and specifies that investigating people for growing, buying, distributing or possessing those substances "shall be amongst the lowest law enforcement priority for the City of Oakland." (Merritt Kennedy, *Oakland City Council Effectively Decriminalizes Psychedelic Mushrooms* (Jun. 5, 2019) <https://www.npr.org/2019/06/05/730061916/oakland-city-council-effectively-decriminalizes-psychedelic-mushrooms> [as of June 22, 2023].) Similarly, a resolution passed by the Santa Cruz City Council in 2020 made the personal possession and use of entheogenic plants and fungi a low priority for law enforcement. (David E. Carpenter, *Santa Cruz is Third U.S. City to Decriminalize Psilocybin, Plant Medicine, as Advocacy Expands* (Feb. 1 2020) <https://www.forbes.com/sites/davidcarpenter/2020/02/01/santa-cruz-is-third-us-city-to-decriminalize-psilocybin-plant-medicine-as-advocacy-expands/?sh=5fa1c2cd5d0d> [as of June 22, 2023].) The Ann Arbor City Council passed a similar measure that same year. (Associated Press, *Ann Arbor Decriminalizes Magic Mushrooms, Psychedelic Plants* (Sept. 26, 2020) <https://apnews.com/article/ann-arbor-plants-featured-ca-state-wire-mi-state-wire-b0ce69ca0961c150e0f900e8ea4cf432> [as of June 22, 2023].) Initiative 81, the Entheogenic Plant and Fungus Policy Act of 2020, makes "the investigation and arrest of persons 18 years of age or older, for non-commercial planting, cultivating, purchasing, transporting, distributing, engaging in practices with, and/or possessing entheogenic plants and fungi" among the lowest enforcement priorities for Washington D.C.'s local police department. (https://decrimnaturedc.org/wp-content/uploads/2020/02/Entheogenic_Plant_and_Fungus_Policy_Act_of_2020_published_2_18_2020.pdf) Additional jurisdictions have passed similar measures since 2020.

In 2020, Oregon voters approved Measure 109, the Psilocybin Services Act, which directed the Oregon Health Authority to create a state-licensed, psilocybin-assisted therapy program over a two-year period. (Kristian Foden-Vencil, *Oregon Voters Legalize Therapeutic Psilocybin* (Nov. 4, 2020) <https://www.opb.org/article/2020/11/04/oregon-measure-109-psilocybin//> [as of June 22, 2023].) In implementing Measure 109, Oregon had to determine how to license and regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products as well as the provision of psilocybin services. (https://www.oregon.gov/oha/ph/preventionwellness/pages/oregon-psilocybin-services.aspx) Following the two-year development period for psilocybin services, the state began taking license applications on January 2, 2023. (*Ibid.*) Psilocybin services refers to preparation,

administration, and integration sessions provided by a licensed facilitator. (*Ibid.*) Psilocybin services are available to individuals aged 21 and older and do not require a prescription or medical referral. (*Ibid.*) The psilocybin products consumed must be cultivated or produced by a licensed psilocybin manufacturer and can only be provided to a client at a licensed psilocybin service center during an administration session. (*Ibid.*) Psilocybin services are expected to be available to the public later this year. (Andrew Selsky and Mike Corder, *Oregon Closer to Magic Mushroom Therapy, But Has Setback* (Mar. 10, 2023) < https://apnews.com/article/magic-mushroom-therapy-psilocybin-legalization-oregon-bd1b3c43cab74437e8868751c9c9591d> [as of June 22, 2023].)

During the same election, Oregon voters approved Measure 110 that reduced the personal noncommercial possession of small amounts of a Schedule I-IV controlled substance, including several hallucinogens, from a criminal offense to a civil violation resulting in a maximum fine of $100. (Legislative Policy and Research Office, *Measure 110 (2020): Background Brief* (Dec. 2020) <https://www.oregonlegislature.gov/lpro/Publications/Background-Brief-Measure-110-(2020).pdf> [as of June 22, 2023].)

More recently, Colorado voters approved Proposition 122 which, among things, decriminalized the personal possession and use of psilocybin, psilocyn, DMT, ibogaine and mescaline for adults aged 21 and older. (Andrew Kenney, *Coloradans Voted to Legalize Psilocybin. What's Next?* (Nov. 25, 2022) <https://www.cpr.org/2022/11/25/colorado-psilocybin-legalization-whats-next/> [as of June 22, 2023.) The measure additionally establishes a program for licensed "healing centers" to administer psilocybin and psilocyn to adults by licensed professionals, and creates a regulatory framework for the manufacture, cultivation, testing, storage, transport, transfer, delivery, sale, and purchase of the covered substances between healing centers and other permitted entities. (*Ibid.*; https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2021-2022/58Final.pdf)

4) **If This Bill Becomes Law, the Conduct Allowed would Still be Criminal Under Federal Law:** State authorization does not nullify federal drug laws, and the substances this bill decriminalize remain illegal under federal law. As a result, state authorization for personal possession or for facilities providing "facilitated and supported use" of mescaline, DMT, ibogaine, psilocybin, and psilocin would not prevent the federal government from shutting down those facilities. Likewise, state authorization does not provide immunity from federal criminal proceedings, if federal law enforcement was inclined to pursue them.

For example, federal law provides, "It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice," or as otherwise specified. (21 U.S.C. § 844) It also makes it unlawful to do either of the following:

(a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(b) manage or control any place, whether permanently or temporarily, either as an owner,

lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. (21 U.S.C. § 856.)

Despite decriminalizing personal possession of specified hallucinogens and creating a pathway for their facilitated and supported use, conduct authorized under this bill would still be unlawful under federal law.

5) **Argument in Support**:

a) According to the *Law Enforcement Action Partnership*, "The Law Enforcement Action Partnership is a nonprofit organization of police, prosecutors, judges, and other law enforcement officials working to improve the criminal justice system. We believe that SB 58 would advance that cause and ask for your favorable vote.

"In our field of work, we see how destructive outdated drug laws can be to individuals and communities. Decriminalizing the possession and personal use of certain psychedelics will allow law enforcement officials to prioritize serious threats to public safety and redirect resources to strategies that work, rather than requiring a disproportionate criminal response. An arrest or incarceration record limits a person's job and housing opportunities, eligibility for student aid and home loans, voting rights, access to public benefits… the list goes on and on.

"Our current system fails to acknowledge the religious and medicinal uses of many non-addictive plant medicines decriminalized in this bill, which have been used for thousands of years by indigenous cultures and by present-day communities.

"Generations of anecdotal evidence and current clinical research at leading universities including John Hopkins, NYU, and UCLA, point to therapeutic uses for psychedelic drugs in treating complex mental health issues such as Post-Traumatic Stress Disorder, treatment-resistant depression, and addiction.

"Drugs are classified arbitrarily and not based on science. In a time of rampant opioid overdoses, police and veteran suicides caused by PTSD, and an unaddressed mental health crisis in this country, no one should go to jail for using a healing psychedelic to treat serious mental health issues. Further, the promising research showing the healing properties of these substances should not be stymied by an arbitrary criminal classification."

b) According to *The Action Lab at Northeastern University*, "The stigma behind psychedelic drugs overshadows their legitimate value as medicine. In the 1960s, psychedelics were legal and many researchers were conducting promising studies on the effectiveness of substances as a medicine. However, the War on Drugs halted this scientific progress and among many things, created a system of criminalization to deter drug use that is not founded in science. Today, we have research that clearly demonstrates psychedelics' value as a tool for healing, and many experts consider them the most promising advancement in mental health treatment in decades.

"For California's veterans, psychedelics have especially promising healing potential. Too many veterans live with the debilitating effects of PTSD, and studies indicates that for veterans, many of whom live with PTSD, access to psychedelics can be effective in treating this acute trauma. Such treatment has the potential to save lives—veterans die by suicide at a rate of one and a half times the general public. Many veterans who have used psychedelic medicines to treat their PTSD report that without this treatment, they would have taken their life.

"In recent years, we have seen many states and localities acknowledge the healing potential of psychedelics. In addition to cities across the country, the California cities of Oakland, San Francisco, and Santa Cruz passed resolutions decriminalizing plant-based psychedelics. Washington D.C. did the same. In 2020, Oregon voters approved two ballot measures that decriminalize the personal use of all scheduled substances, and authorized the creation of a state-licensed, psilocybin-assisted therapy program over the next two years. This year, Colorado voters approved a ballot measure to decriminalize the noncommercial, personal possession of psychedelic plants and fungi.

"It is time that California stop criminalizing people that possess and use substances that have immense medicinal potential and look towards how California should thoughtfully regulate legal use of these substances. SB 58 is an incremental measure that relies on a more modern understanding of psychedelics, and provides space for California to start a more sensible conversation about how we really ought to treat people who are using psychedelic substances for their own personal and medical purposes."

6) **Argument in Opposition**:

a) According to the *California Narcotic Officers' Association*, "SB58 simply does not make sense in light of the lack of scientific evidence that has yet to be documented. What we do know is that the FDA, who promotes the protection of the public and medical innovations has not done this with any of the drugs listed in SB58. There are studies underway, but even then, we are being cautioned not to allow our enthusiasm to overcome medical science.

"At the Langon Center for Psychedelic Medicine, within the New York University, Director Dr. Bogenshutz said: He is concerned about allowing any drug to be used, as if it was already approved. He said this is a "deviation" from the standard process.

"The Doctor is concerned that the enthusiasm is "outpacing science". During his discussion on the medical application of psychedelics, he is hoping for a breakthrough, "but we really can't say that is true until we've accumulated and analyzed the evidence that is needed to make that determination,". Dr. Bogenshutz oversees the psychedelic research program, is a professor of Psychiatry at NYU Grossman School of Medicine and graduated from MIT. He is cautioning us about rushing into this venture without scientific evidence.

"Reaching across the globe, we see that Australia has been conducting research through their dept of health [sic] and acknowledged in their February 2023 announcement that "There is only limited evidence that psilocybin is of benefit in treating mental illnesses". Australia has not approved any medications that contain psilocybin, and they caution that

any application would mandate a clinically supervised settings with intensive professional support. Psilocybin is not a drug to be dispensed like marijuana without professional guidance.

"The most current report on Crime published by California Attorney General Bonta, revealed that all drug arrests are down, but violent crimes are up. Homicide, rape, assaults, domestic violence, and arson have all increased. The number of property crimes and DUI's are up as well. We had over 15,000 senior citizens that were brutely and violently attacked in California last year: 350 of them were raped.

"So, if we look back over the last six years, we can see that by not holding drug violators accountable, we are experiencing an increase in violent crimes. Hence making additional illegal drugs available to the public just doesn't make sense."

b) According to the *California Coalition of School Safety Professionals*, "While we appreciate the author's comments concerning the potential medical and mental health benefits these substances might be able to provide to some trauma patients, including veterans, we are troubled by the danger that could result from this de-criminalization of these psychedelic drugs.

"Medical professionals are best situated to determine which, if any, of these hallucinogens (and how much) should be prescribed to their patients. California de-criminalized cannabis by first authorizing only the medical use of cannabis. Similarly, we believe that if our state is going to effectively legalize magic mushrooms, etc., we should take a more incremental approach and begin by requiring some type of initial medical oversight, at least."

"Decriminalizing the widespread cultivation, distribution and ingestion of these hallucinogens will result in additional impaired drivers and make our roads less safe. We recognize that alcohol remains the number one cause of impaired drivers, but we also believe that legalizing mushrooms will increase the overall number of intoxicated motor vehicle operators endangering others on our streets and highways."

7) **Related Legislation**: SB 250 (Umberg), would provide that a person is immune from prosecution for possession of a controlled substance or controlled substance analog for personal use if they deliver the substance to the local public health agency or to local law enforcement.

8) **Prior Legislation**:

a) SB 519 (Wiener), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 519 died on the Assembly inactive file.

b) SB 57 (Wiener), of the 2021-2022 Legislative Session, would have authorized the City and County of San Francisco, the County of Los Angeles, and the City of Oakland to approve entities to operate overdose prevention program for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access or referrals substance use disorder treatment services,

primary medical care, mental health services, and social services. SB 57 was vetoed by the Governor..

c) AB 362 (Eggman), of the 2019-2020 Legislative Session, would have authorized the City and County of San Francisco to approve entities to operate an overdose prevention program for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access to referrals to addiction treatment. AB 362 was never heard in the Senate Health Committee.

d) AB 186 (Eggman), of the 2017-2018 Legislative Session, contained similar provisions to AB 362 (Eggman). AB 186 was vetoed by Governor Brown.

e) AB 2495 (Eggman), of the 2015-2016 Legislative Session, would have decriminalized conduct connected to use and operation of an adult public health or medical intervention facility that is permitted by state or local health departments and intended to reduce death, disability, or injury due to the use of controlled substances. SB 294 was heard for testimony and returned to the desk.

f) SB 41 (Yee), Chapter 738, Statutes of 2011, authorized a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 or older for human use without a prescription.

g) SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Path
Alameda County Democratic Party
Bend the Arc: Jewish Action
Blue Dream Democrats
California Association of Social Rehabilitation Agencies
California Attorneys for Criminal Justice
California Institute of Integral Studies
California Public Defenders Association
City of Berkeley
City of Eureka
City of West Hollywood
Decriminalize Nature, San Francisco
Disability Rights California
Dr. Bronner's
Govern for California
Grunt Style Foundation
Heroic Hearts Project
Hippie and A Veteran Foundation

Home-la
Human Impact Partners
Initiate Justice (UNREG)
Innate Integrative Medicine, Santa Cruz
Law Enforcement Action Partnership
Legalization and Regulation Committee of The Psychedelic Bar Association
Mindlumen
National Association of Social Workers, California Chapter
New Approach Advocacy Fund
Oakland City Council Member Rebecca Kaplan
Personal Plants
San Francisco Public Defender
Secure Justice
Smart Justice California
Solano County Democratic Central Committee
The Action Lab At Northeastern University
Unlimited Sciences
Veterans of War

6 Private Individuals

Opposition

Arcadia Police Officers' Association
Be the Influence
Beverly Hills; City of
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition for Psychedelic Safety and Education
California Coalition of School Safety Professionals
California Contract Cities Association
California District Attorneys Association
California Family Council
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Citizens Commission on Human Rights
Claremont Police Officers Association
Concerned Women for America
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Hermosa Coalition for Drug-free Kids
Los Angeles County Professional Peace Officers Association
Los Angeles Professional Peace Officers Association
Los Angeles School Police Officers Association

Marin Residents for Public Health Cannabis Policies
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Organization for Justice and Equality
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diegans Against Crime
San Diego Deputy District Attorneys Association
Santa Ana Police Officers Association
Upland Police Officers Association
Visalia; City of

56 Private Individuals

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

Amended Mock-up for 2023-2024 SB-58 (Wiener (S))

Mock-up based on Version Number 97 - Amended Assembly 6/20/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

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

(a) For over fifty years, the War on Drugs has caused overwhelming financial and societal costs. The current United States drug control scheme does not reflect a modern understanding of the incentives, economics, or impacts of substance use, nor does it accurately reflect the risks or potential therapeutic benefits of many presently illicit substances.

(b) Drug prohibition has failed to deter drug use, and it has increased its danger. Criminalization of drug use has created an underground market in which difficult-to-verify dosages and the presence of adulterants increase the risks of illicit drugs.

(c) Lack of honest, evidence-based drug education has paved the way for decades of stigma and misinformation, which have contributed to increasing the dangers of drug use.

(d) Encouraging access to harm reduction tools like fentanyl test strips, drug-checking kits, gas chromatography mass spectrometry machines, and milligram scales increases public health and safety by allowing users to make more accurate decisions about their personal use.

(e) Clinical research demonstrates the potential use of some psychedelic compounds, in conjunction with therapy, for the treatment of mental health, such as end-of-life anxiety, depression, post-traumatic stress, and substance use disorders. Observational evidence and traditional uses of psychedelic plants and fungi demonstrate how ceremony and community are utilized to enhance the outcomes and increase the safety of spiritual practice, emotional healing, and responsible personal growth.

(f) Proposition 122 in Colorado, which passed in November 2022, with a 53 percent vote of the state population, will decriminalize the noncommercial, personal possession of psychedelic plants and fungi and establish a regulated therapy system to provide people with therapeutic access to psychedelic plants and fungi.

(g) Measure 109 in Oregon, which passed in November 2020, with a 56 percent vote of the state population, will establish a regulated psilocybin therapy system in Oregon to provide people therapeutic access to psilocybin.

(h) Measure 110 in Oregon, which passed in November 2020, with a 58 percent vote of the state population, decriminalized the personal possession of all drugs, and almost 20 countries around the world including Portugal, the Czech Republic, and Spain, have expressly or effectively decriminalized the personal use of illicit substances.

(i) The City Councils of The City of Oakland, and the City of Santa Cruz, and the Board of Supervisors of the City and County of San Francisco have all passed resolutions deprioritizing the enforcement of the possession, use, and propagation of psychedelic plants and fungi, effectively decriminalizing in those cities. Since June 2019, the City of Ann Arbor, Michigan, and the Cities of Somerville and Cambridge, Massachusetts have all decriminalized the possession, use, and propagation of psychedelic plants and fungi at the local level. In 2020, Washington, D.C., passed Initiative 81 to decriminalize and deprioritize the possession and use of psychedelic plants and fungi with 76 percent voter approval.

(j) This act will decriminalize the noncommercial, personal use of specified controlled substances. **This act further decriminalizes the use of specified controlled substances for the purpose of group community-based healing,** including, **facilitated and supported use,** risk reduction and other related services, **but delays implementation of this provision until such time as a framework for the therapeutic use (which would include community-based healing, facilitated and supported use, risk reduction and other related services) of the specified controlled substances is developed and adopted. This bill** ~~and lay~~ **lays** the groundwork for California to develop a ~~regulated~~ therapeutic access program for psychedelic plants and fungi.

(k) These changes in law will not affect any restrictions on the driving or operation of a vehicle while impaired, or an employer's ability to restrict the use of controlled substances by its employees, or affect the legal standard for negligence.

(l) Peyote is specifically excluded from the list of substances to be decriminalized, and any cultivation, harvest, extraction, tincture or other product manufactured or derived therefrom, because of the nearly endangered status of the peyote plant and the special significance peyote holds in Native American spirituality. Section 11363 of the Health and Safety Code, which makes it a crime in California to cultivate, harvest, dry, or process any plant of the genus Lophophora, also known as Peyote, is not amended or repealed.

(m) The State of California fully respects and supports the continued Native American possession and use of peyote under federal law, Section 1996a of Title 42 of the United States Code, understanding that Native Americans in the United States were persecuted and prosecuted for their ceremonial practices and use of peyote for more than a century and had to fight numerous legal and political battles to achieve the current protected status, and the enactment of this legislation does not intend to undermine explicitly or implicitly that status.

SEC. 2. Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.

(2) Allylprodine.

(3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

(4) Alphameprodine.

(5) Alphamethadol.

(6) Benzethidine.

(7) Betacetylmethadol.

(8) Betameprodine.

(9) Betamethadol.

(10) Betaprodine.

(11) Clonitazene.

(12) Dextromoramide.

(13) Diampromide.

(14) Diethylthiambutene.

(15) Difenoxin.

(16) Dimenoxadol.

(17) Dimepheptanol.

(18) Dimethylthiambutene.

(19) Dioxaphetyl butyrate.

(20) Dipipanone.

(21) Ethylmethylthiambutene.

(22) Etonitazene.

(23) Etoxeridine.

(24) Furethidine.

(25) Hydroxypethidine.

(26) Ketobemidone.

(27) Levomoramide.

(28) Levophenacylmorphan.

(29) Morpheridine.

(30) Noracymethadol.

(31) Norlevorphanol.

(32) Normethadone.

(33) Norpipanone.

(34) Phenadoxone.

(35) Phenampromide.

(36) Phenomorphan.

(37) Phenoperidine.

(38) Piritramide.

(39) Proheptazine.

(40) Properidine.

(41) Propiram.

(42) Racemoramide.

(43) Tilidine.

(44) Trimeperidine.

(45) Any substance that contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.

(46) Any substance that contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.

(47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).

(48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.

(2) Acetyldihydrocodeine.

(3) Benzylmorphine.

(4) Codeine methylbromide.

(5) Codeine-N-Oxide.

(6) Cyprenorphine.

(7) Desomorphine.

(8) Dihydromorphine.

(9) Drotebanol.

(10) Etorphine (except hydrochloride salt).

(11) Heroin.

(12) Hydromorphinol.

(13) Methyldesorphine.

(14) Methyldihydromorphine.

(15) Morphine methylbromide.

(16) Morphine methylsulfonate.

(17) Morphine-N-Oxide.

(18) Myrophine.

(19) Nicocodeine.

(20) Nicomorphine.

(21) Normorphine.

(22) Pholcodine.

(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, or that contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP."

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine—Some trade or other names: DMT.

(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

(13) Cannabis.

(14) Mescaline, derived from plants presently classified botanically in the Echinopsis or Trichocereus genus of cacti, including, without limitation, the Bolivian Torch Cactus, San Pedro Cactus, or Peruvian Torch Cactus, but not including mescaline derived from any plant described in paragraph (15).

(15) Peyote—Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

SEC. 3. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15) or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V that is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except

that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a), the judge may, in addition to any punishment provided for pursuant to subdivision (a), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of their inability to pay the fine permitted under this subdivision.

(c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation that may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

(d) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(e) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

SEC. 4. Section 11350.1 is added to the Health and Safety Code, to read:

11350.1. (a) Except as otherwise provided in subdivisions (b), (c), (d), ~~and~~ (e), **and (f)** of this section and notwithstanding any other law, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

(1) The possession, preparation, obtaining, or transportation, of no more than the allowable amount of mescaline, as described in paragraph (14) of subdivision (d) of Section 11054, for personal use or for facilitated or supported use.

(2) The ingesting of mescaline.

(3) The possession, planting, cultivating, harvesting, or preparation of plants capable of producing mescaline, except for the plant presently classified botanically as Lophophora williamsii Lemaire, on property owned or controlled by a person, for the purposes described in this subdivision by that person, and possession of any product produced by those plants.

(4) The assisting of another person, 21 years of age or older, with any act described in paragraphs (1) to (3), inclusive, of this subdivision.

(b) Implementation related to facilitated and supported use under paragraph (1) of subdivision (a) and the activities described in paragraph (4) of subdivision (a) shall not be lawful until such time as a framework governing the therapeutic use (including facilitated and supported use) of mescaline has been developed and adopted.

~~(b)~~ **(c)** Possession of mescaline by a person 21 years of age or over on the gro
unds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

~~(c)~~ **(d)**(1) A person who knowingly gives away or administers mescaline to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(2) Notwithstanding paragraph (1), a person 18 years of age or over who knowingly gives away or administers mescaline to a minor under 14 years of age in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(3) A person who knowingly gives away or administers mescaline to a person who is at least 18 years of age, but under 21 years of age is guilty of an infraction.

~~(d)~~ **(e)** Except as otherwise provided, possession of mescaline by a person under 18 years of age is punishable as an infraction and shall require:

(1) Upon a finding that a first offense has been committed, four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or counseling services are made available to them.

(2) Upon a finding that a second offense or subsequent offense has been committed, six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them.

~~(e)~~ **(f)** Except as otherwise provided, possession of mescaline by a person at least 18 years of age but less than 21 years of age is punishable as an infraction.

~~(f)~~ **(g)** Mescaline or related products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

~~(g)~~ **(h)** As used in this section, the following terms are defined as follows:

(1) "Allowable amount" means four grams per person or, in the context of facilitated or supported use involving multiple persons, the aggregate of allowable amounts per participant. "Allowable amount" does not include the weight of any material of which the substance is a part or to which the substance is added, dissolved, held in solution, or suspended, or any ingredient or material combined with the substance specified in this subdivision to prepare a topical or oral administration, food, drink, or other product, including, but not limited to, a brew or tea.

(2) "Facilitated or supported use" means the supervised or assisted personal use of mescaline by an individual or group of persons 21 years of age or older, or the assisting or supervising of such persons in such use, within the context of spiritual guidance, community-based healing, or related services.

(3) "Financial gain" means the receipt of money or other valuable consideration in exchange for the item being transferred. "Financial gain" does not include reasonable fees for spiritual guidance or related services that are provided in conjunction with facilitated or supported use of mescaline under the guidance and supervision, and on the premises, of the person providing those services.

(4) "Personal use" means for the personal ingestion or other personal and noncommercial use by the person in possession.

(5) "Preparation" means processing or otherwise preparing for use.

~~(h)~~ **(i) Subsequent to the adoption of a framework pursuant to subdivision (b), the** ~~The~~ transfer of a substance described in paragraph (1) of subdivision (a), without financial gain, between persons 21 years of age and older, and in the context of facilitated or supported use, shall not be a violation of Section 11352 or any other state or local law.

SEC. 5. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in

subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15) or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Until January 1, 2026, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section shall not apply to the possession solely for personal use of hypodermic needles or syringes.

SEC. 6. Section 11364.7 of the Health and Safety Code is amended to read:

11364.7. (a) (1) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

(2) A public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(3) This subdivision does not apply to any paraphernalia that is intended to be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, any of the following substances:

(A) Dimethyltryptamine (DMT).

(B) Ibogaine.

(C) Mescaline.

(D) Psilocybin.

(E) Psilocyn.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years younger, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471 unless its distribution has been authorized pursuant to subdivision (a).

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 7. Section 11365 of the Health and Safety Code is amended to read:

11365. (a) It is unlawful to visit or to be in any room or place where any controlled substances that are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15) or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) or paragraph (2) of subdivision (d) of Section 11055, or that are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring.

(b) This section shall apply only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of a controlled substance specified in subdivision (a). This subdivision is declaratory of existing law as expressed in People v. Cressey (1970) 2 Cal. 3d 836.

SEC. 8. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance that is (1) classified in Schedule III, IV, or V, and that is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (13), (14), (15), (18), (19), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) The judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of their inability to pay the fine permitted under this subdivision.

(c) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(d) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

SEC. 9. Section 11377.1 is added to the Health and Safety Code, to read:

11377.1. (a) Except as otherwise provided in subdivisions (b), (c), (d), ~~and~~ (e)**, and (f)** of this section, and notwithstanding any other law, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

(1) The possession, preparation, obtaining, or transportation, of no more than the allowable amount of any of the following substances for personal use or facilitated or supported use:

(A) The controlled substance specified in paragraph (10) of subdivision (d) of Section 11054.

(B) The controlled substance specified in paragraph (11) of subdivision (d) of Section 11054.

(C) The controlled substance specified in paragraph (18) of subdivision (d) of Section 11054.

(D) The controlled substance specified in paragraph (19) of subdivision (d) of Section 11054.

(2) The ingesting of a substance described in paragraph (1).

(3) The possession, planting, cultivating, harvesting, or preparation of plants capable of producing a substance described in paragraph (1), on property owned or controlled by a person, for the uses described in this subdivision by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other materials that contain a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054, for that purpose.

(4) The assisting of another person, 21 years of age or older, with any act described in paragraphs (1) to (3), inclusive, of this subdivision.

(b) Implementation related to facilitated and supported use under paragraph (1) of subdivision (a) and the activities described in paragraph (4) of subdivision (a) shall not be lawful until such time as a framework governing the therapeutic use (including facilitated and supported use) of the substances identified in paragraphs (10), (11), (18), and (19) of subdivision (d) of Section 11054 has been developed and adopted.

~~(b)~~ **(c)** Possession of a controlled substance specified in paragraph (1) of subdivision (a) by a person 21 years of age or over, on the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

~~(c)~~ **(d)** (1) A person who knowingly gives away or administers a controlled substance specified in paragraph (1) of subdivision (a) to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(2) Notwithstanding paragraph (1), a person 18 years of age or over who knowingly gives away or administers a substance described in paragraph (1) to a minor under 14 years of age in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(3) A person who knowingly gives away or administers a substance described in paragraph (1) to a person who is at least 18 years of age, but under 21 years of age is guilty of an infraction.

~~(d)~~ **(e)** Except as otherwise provided, possession of a controlled substance specified in paragraph (1) of subdivision (a) by a person under 18 years of age is punishable as an infraction and shall require:

(1) Upon a finding that a first offense has been committed, four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or counseling services are made available to them.

(2) Upon a finding that a second offense or subsequent offense has been committed, six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them.

~~(e)~~ **(f)** Except as otherwise provided, possession of a controlled substance specified in paragraph (1) of subdivision (a) by a person at least 18 years of age but less than 21 years of age is punishable as an infraction.

~~(f)~~ **(g)** A controlled substance described in this section or any related product involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

~~(g)~~ **(h)** As used in this section, the following terms are defined as follows:

(1) "Allowable amount" means the following quantities of a substance per person or, in the context of facilitated or supported use involving multiple persons, the aggregate of allowable amounts per participant. "Allowable amount" does not include the weight of any material of which the substance is a part or to which the substance is added, dissolved, held in solution, or suspended, or any ingredient or material combined with the substance specified in this subdivision to prepare a topical or oral administration, food, drink, or other product, including, but not limited to, a brew or tea:

(A) Two grams of dimethyltryptamine, otherwise known as DMT.

(B) Fifteen grams of ibogaine.

(C) Two grams of psilocybin or four ounces of a plant or fungi containing psilocybin.

(D) Two grams of psilocyn or four ounces of a plant or fungi containing psilocyn.

(2) "Facilitated or supported use" means the supervised or assisted personal use of a substance described in this section by an individual or group of persons 21 years of age or older, or the

assisting or supervising of such persons in such use, within the context of spiritual guidance, community-based healing, or related services.

(3) "Financial gain" means the receipt of money or other valuable consideration in exchange for the item being transferred. "Financial gain" does not include reasonable fees for spiritual guidance or related services that are provided in conjunction with facilitated or supported use of a controlled substance described in this section under the guidance and supervision, and on the premises, of the person providing those services.

(4) "Personal use" means for the personal ingestion or other personal and noncommercial use by the person in possession.

(5) "Preparation" means processing or otherwise preparing for use.

~~(h)~~ **(i) Subsequent to the adoption of a framework pursuant to subdivision (b), the** ~~The~~ transfer of a substance described in paragraph (1) of subdivision (a), without financial gain, between persons 21 years of age and older, and in the context of facilitated or supported use, shall not be a violation of Section 11352 or any other state or local law.

SEC. 10. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b), in Section 11377.1, and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance that is (1) classified in Schedule III, IV, or V and that is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, "transports" means to transport for sale.

(d) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

SEC. 11. Section 11382 of the Health and Safety Code is amended to read:

11382. Except as otherwise provided in Section 11377.1, every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance that is (a) classified in Schedule III, IV, or V and that is not a narcotic drug, or (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

SEC. 12. Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of the Health and Safety Code is repealed.

SEC. 13. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) A person shall not use, or be under the influence of any controlled substance that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. A person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not more than one year in a county jail. The court may also place a person convicted under this subdivision on probation for a period not to exceed five years.

(b) (1) A person who is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in a county jail for not less than 180 days nor more than one year. In no event does the court have the power to absolve a person convicted of a violation of subdivision (a) who is punishable under this subdivision from the obligation of spending at least 180 days in confinement in a county jail unless there are no licensed drug rehabilitation programs reasonably available.

(2) For the purpose of this section, a drug rehabilitation program is not reasonably available unless the person is not required to pay more than the court determines that they are reasonably able to pay in order to participate in the program.

(c) (1) The court may, when it would be in the interest of justice, permit a person convicted of a violation of subdivision (a) punishable under subdivision (a) or (b) to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in a county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program.

(2) In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(d) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against a person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and a defendant shall not be denied probation because of their inability to pay the fine permitted under this subdivision.

(e) (1) Notwithstanding subdivisions (a) and (b) or any other law, a person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in a county jail for not exceeding one year or in state prison.

(2) As used in this subdivision "immediate personal possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subdivision (e) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(g) This section does not prevent deferred entry of judgment or a defendant's participation in a preguilty plea drug court program under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance that is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision (b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for deferred entry of judgment or a preguilty plea drug court program.

SEC. 14. Section 11999 of the Health and Safety Code is repealed.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction,

or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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.

SEC. 16. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Date of Hearing: June 27, 2023
Counsel: Andrew Ironside

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

SB 67 (Seyarto) – As Amended April 24, 2023

SUMMARY: Requires coroners and medical examiners to report actual or suspected overdoses to the Emergency Medical Services Agency (EMSA), which is then required to submit this data to the Overdose Detection Mapping Application Program (ODMAP). Specifically, **this bill**:

1) Requires a coroner or medical examiner who evaluates an individual who, in their opinion, died as the result of an overdose as a contributing factor, to report the incident to the ODMAP managed by the Washington/Baltimore High Intensity Drug Trafficking Area program.

2) Requires the coroner or medical examiner to make the report as soon as possible, but not later than 72 hours after examining the individual who died as the result of an overdose.

3) Requires, if the cause of death is still preliminary and pending toxicology screens, the coroner or medical examiner to report the overdose as a preliminary report, and to update the report when the cause of death is confirmed.

4) Prohibits overdose information reported to ODMAP by a coroner or medical examiner, or shared with ODMAP by EMSA, from being used for a criminal investigation or prosecution.

5) Provides that a person who in good faith makes a report to ODMAP is immune from civil or criminal liability for making the report.

6) Defines "overdose" as "a condition, including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death, resulting from the consumption or use of any controlled dangerous substance that requires medical attention, assistance, or treatment, and clinical suspicion for drug overdose, including respiratory depression, unconsciousness, or altered mental state, without other conditions to explain the clinical condition."

7) Provides that it is the intent of the Legislature that the overdose information gathered be used for the purpose of making decisions regarding the allocation of public health and educational resources to communities adversely impacted by the use of drugs that lead to overdoses.

EXISTING LAW:

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

a) Violent, sudden or unusual deaths;

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

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

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

e) Deaths from occupational diseases or occupational hazards; and,

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

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

3) States that the content of a death certificate must include, among other things, personal data of the decedent, date of death, place of death, disease or conditions leading directly to death and antecedent causes, accident and injury information, and information regarding pregnancy. (Health & Saf. Code, § 102875.)

4) Allows the medical and health section data and time of death to be filled out in certain circumstances by the physician or surgeon last in attendance or by a supervised licensed physician assistant, unless the coroner is required to certify the medical and health section data. (Health & Saf. Code, § 102795.)

5) Requires a physician and surgeon, physician assistant, funeral director, or other person to notify the coroner when they have knowledge that a death occurred, or if they have charge of a body in which death occurred under any of the following, among others:

a) Without medical attendance;

b) During continued absence of attending physician and surgeon;

c) Where attending physician and surgeon, or physician assistant is unable to state cause of death; and,

d) Reasonable suspicion to suspect death was caused by criminal act. (Health & Saf. Code, § 102850.)

6) Requires an attending physician's certificate be completed within 15 hours of death, or, if a coroner examined the body, within three days after examination of the body. (Health & Saf. Code, § 102800.)

7) Requires each death to be registered with the local registrar of births and deaths in the district in which the death was found or officially pronounced. (Health & Saf. Code, § 102775.)

8) Requires a funeral director, or person acting in lieu thereof, to prepare the certificate, other than the medical and health section data, and register it with the local registrar. (Health & Saf. Code, §§ 102780, 102790.)

9) States that the local registrar of deaths must carefully examine each certificate before acceptance for registration, and if any incomplete or incorrect certificates are submitted, to require further information as needed to make the certificate consistent with established policies. (Health & Saf. Code, § 102305.)

10) Requires the California Department of Public Health (DPH) to establish an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information. (Health & Saf. Code, § 102778.)

11) Requires the DPH to access data within the electronic death registration system to compile reports on veteran suicide that include information on age, sex, race, county of residence, and method of suicide. (Health & Saf. Code, § 102791.)

12) Requires DPH to track data on pregnancy-related deaths and publish such data at least once every three years, as specified. (Health & Saf. Code, § 123630.4.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Californians are falling victim to drug dealers who prey on the potency and availability of illicit drugs and opioids, like fentanyl. While each state, local, and federal departments [sic] uses its own program to track and report overdose incidents, currently, there is no uniform sharing of overdoses that include emergency medical services agencies, coroners, and fire departments. Limited to only authorized personnel and eliminating all personal identifiable information, ODMAP provides an essential tool for first responders on the frontlines of the opioid epidemic to effectively track and address live patterns of overdoses."

2) **Background on ODMAP:** In 1988, Congress created the High Intensity Drug Trafficking Areas (HIDTA) program to provide assistance to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States. There are currently 33 HIDTAs, including four in California: Central Valley, Northern California, Los Angeles, and San Diego/Imperial Valley. In January of 2017, the Washington/Baltimore HIDTA launched ODMAP as a response to the lack of a consistent methodology to track overdoses, which limited the ability to understand and mobilize against the crisis. According to the Washington/Baltimore HIDTA, ODMAP is an overdose mapping tool that allows first responders to log an overdose in real time into a centralized database in order to support public safety and public health efforts to mobilize an immediate response to a sudden increase, or spike, in overdose events. ODMAP is only available to government agencies serving the interest of public safety and health, and each agency wishing to use the system must sign a participation agreement designed to protect the data within the system. The system currently serves more than 3,700 agencies with more than 28,000 users in all 50 states, and has logged 850,000 overdose events. According to the Washington/Baltimore HIDTA, there are seventeen states with statewide implementation

strategies, including several with legislation requiring reporting to ODMAP. (https://www.hidta.org/odmap/)

3) **Reporting Drug Overdoses:** California is taking a multi-pronged, collaborative approach to comprehensively address the drug epidemic in the state. (DPH, *Overdose Prevention Initiative*, (Last updated Dec. 6, 2022) <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx> [as of June 22, 2023].) California's Overdose Prevention Initiative (OPI) collects and shares data on fatal and non-fatal drug related overdoses, overdose risk factors, prescriptions, and substance use. (DPH, *Overdose Prevention Initiative* (last updated June, 2023) <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/OPI-landing.aspx> [as of June 22, 2023].) The OPI works with local and state partners to address the complex and evolving nature of the drug overdose epidemic by data collection and analysis, prevention programs, public awareness and education campaigns, and safe prescribing and treatment practices. (DPH. *Drug Overdose Response Partner Recommendations*. (Last updated Feb. 16, 2023].) <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Drug-Overdose-Response.aspx> [as of Mar. 22, 2023].) One of the five recommendations it makes to local and statewide partners is to improve rapid identification of drug overdose outbreaks partnering with coroner and medical examiner offices, healthcare facilities, and emergency medical services to obtain overdose data to form a timely response. (*Ibid.*)

Generally, drug overdose deaths require lengthier investigations that can include forensic toxicology analysis before the data can be used even in a preliminary or provisional manner. (Centers for Disease Control and Prevention (CDC) *Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts*. (Last reviewed Mar. 15, 2023) <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm#drug_specificity> [as of Mar. 22, 2023].) Provisional data is used to give an approximate, although not completely accurate, depiction of drug overdose deaths. (*Ibid.*) Provisional counts of drug overdose deaths are underestimated relative to final counts, the degree of which is primarily determined by the percentage of records with the manner of death reported as "pending investigation" and tends to vary by a number of factors. (*Ibid.*) At the federal level, provisional estimates of drug overdose deaths were traditionally reported 6 months after the date of death, however, due to recent improvements, the 6-month lag was shortened to 4 months. (*Ibid.*) In California, the latest provisional data that the OPI displays was released on May 31, 2023, and it showed overdose deaths up to January 2023. (OPI. *Preliminary Monthly Fatal Drug-Related Overdose Counts*. (May 31, 2023) <https://www.cdph.ca.gov/Programs/CCDPHP/sapb/CDPH Document Library/Prelim_Monthly_Death_Data_2023_04_FINAL_ADA.pdf> [as of June 22, 2023].) Recent changes in the way overdose deaths are reported are resulting in quicker, although perhaps more tentative, data.

According to ESMA, in July of 2022, the agency entered into a data sharing agreement with ODMAP, including developing an application programming interface to allow data sharing from the California Emergency Medical Services Information System (CEMSIS) reporting system. According to EMSA, the system allows near real-time data sharing: as soon as an EMS provider closes out a call and completes the electronic record, the data is submitted to CEMSIS and if the incident is coded as an overdose, that information is then shared with ODMAP (though without personally identifiable information such as name, exact birth date, and exact address). Generally speaking, the data sharing happens nearly instantaneously;

however, there could be a delay of one to two days, depending on the region of California and internet connectivity. Once the Los Angeles County EMSA starts reporting via CEMSIS in July of this year, overdose data from all EMS providers will be shared with ODMAP if the incident record is correctly coded as an overdose or suspected overdose. According to EMSA, because the agreement with ODMAP is less than a year old, they are still working out some kinks. For instance, if an EMS provider does not enter the keywords associated with an overdose correctly, the application programming interface may not trigger the system to share the overdose information with ODMAP. EMSA states they are continuing to work with local EMSAs to improve the accuracy of the data shared with ODMAP to ensure the overdose reporting is as complete as possible.

To ensure accurate overdose reporting, this bill would require coroners and medical examiners to report actual or suspected overdoses to the EMSA, which is then required to submit this data to ODMAP.

4) **Related Legislation**:

   a) AB 1351 (Haney), would have required all coroners or medical examiners to submit quarterly reports to the DPH on deaths caused by, or involving, overdoses of any drugs. AB 1351 was held by the Assembly Appropriations Committee.

   b) AB 1462 (Jim Patterson), would require the DPH to access existing data within the electronic death registration system to compile a report on veteran drug overdose deaths in California and to report specified data. AB 1462 is pending hearing in the Senate Committee on Military and Veterans Affairs.

5) **Prior Legislation**: SB 1695 (Escutia) Chapter 678, Statutes of 2002, among other things, required DPH to create a webpage on drug overdose trends in California, including death rates, in order to ascertain changes in the cause or rate of fatal and nonfatal drug overdoses.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Police Chiefs Association
California Reserve Peace Officers Association
Chino Valley Chamber of Commerce
Claremont Police Officers Association
Corona Police Officers Association
County of Fresno
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Drug Induced Homicide
Fullerton Police Officers' Association
Los Angeles School Police Officers Association

Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Pain Parents & Addicts in Need
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Shasta Substance Use Coalition
Upland Police Officers Association

Opposition

None submitted

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