California State Assembly

PUBLIC SAFETY

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AGENDA

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

PART III

SB 368(Portantino) through SB 796 (Alvarado-Gil)

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

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

SB 368 (Portantino) – As Amended March 30, 2023

As Proposed to be Amended in Committee

SUMMARY: Establishes a process by which firearms can be temporarily transferred to licensed firearm dealers for storage in order to prevent them from being used to attempt suicide. Specifically, **this bill**:

1) Requires a firearm dealer to store a firearm for an individual contemplating suicide under the following circumstances:

   a) The firearm is voluntarily and temporarily transferred to prevent it from being used to attempt suicide by the transferor or another person that may gain access to it;

   b) The firearm dealer only stores it and does not otherwise use it; and,

   c) The duration of the loan is limited to reasonably prevent the suicide attempt.

2) Clarifies that a firearm dealer can still accept storage of a firearm for other lawful purposes.

3) Specifies the manner in which the firearm is required to be returned.

4) States that, if the dealer cannot legally transfer the firearm back to the transferor, then the following procedure shall apply:

   a) The transferor can require the dealer to retain possession for no more than 45 days so the transferor can designate another person to take possession, and requires the dealer to process the transaction, as specified; or

   b) If the transferor does not make a request, or the firearm cannot otherwise be delivered, the dealer must transfer the firearm to law enforcement who must then destroy the firearm, as specified.

5) Requires a dealer taking possession of a firearm pursuant to these provisions to notify the Department of Justice (DOJ) within 48 hours, as specified.

6) Prohibits a firearm dealer from offering an opportunity to win firearm in a game dominated by chance unless they are a nonprofit public benefit or similar corporation, as specified.

7) Provides that any person convicted a specified firearm prohibition who subsequently possesses a firearm may be punished by one year in county jail or three years in state prison,

and by an additional 10 year firearm prohibition.

8) Updates record maintenance and firearm transportation exemptions to reflect these provisions.

9) Contains a severability clause.

EXISTING LAW:

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

2) Provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Pen. Code, §§ 26800 *et seq.*)

3) Requires firearms licensees to conspicuously post within the licensed premises a notice provided by a suicide prevention program, as specified. (Pen. Code, § 26835, subd. (b).)

4) Provides that where neither party to a firearms transaction holds a dealer's license, the parties shall complete the transaction through a licensed firearms dealer. (Pen. Code, § 27545.)

5) Authorizes a firearm to be transferred without going through a firearms dealer if it is to prevent its use in a suicide and the transferee keeps the firearm unloaded and secure. The loan is limited to the amount of time reasonably necessary to prevent the suicide. If the owner cannot have the firearm returned due to a prohibition, the firearm must be delivered to a law enforcement agency without delay. (Pen. Code, § 27882.)

6) Allows a person prohibited from possessing a firearm to transfer the firearm and ammunition to a firearms dealer for storage during the period of prohibition, and allows the firearm dealer to charge storage fees. (Pen. Code, § 29830.)

7) Exempts firearms that are part of auctions or raffles from certain firearm transfer and possession requirements, as specified. (Pen. Code, § 26384, 26581, 27900, 27905.)

8) Requires the Attorney General to keep a complete record of various criminal records, documents, report and licenses in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen or found property. (Pen. Code, § 11106, subd. (a).)

9) Prohibits the carrying of a concealed firearm, and provides that this prohibition does not apply to, or affect, the transportation of a firearm by a person in order to comply with specified provisions of existing law. (Pen. Code, §§ 25400 & 25555.)

10) Prohibits openly carrying an unloaded handgun on the person, as specified, and provides that the prohibition does not apply to, or affect, the open carrying of an unloaded handgun incident to, or in order to comply with, specified provisions of existing law. (Pen. Code, §§

26350 & 26379.)

11) Prohibits carrying certain unloaded firearms on the person, as specified, and provides that the prohibition does not apply to, or affect, the carrying of certain unloaded firearms under specified circumstances, including incident to or in order to comply with specified provisions of existing law. (Pen. Code, §§ 26400 & 26405.)

12) Provides that the Legislature has no power to authorize lotteries, and shall prohibit the sale of lottery tickets in the State, except through the California State Lottery. (Cal. Const. Art IV. Sec. 19, subd. (a) & (d).)

13) States that notwithstanding the general restriction on lotteries, the Legislature may authorize private, nonprofit, eligible organizations, as specified , to conduct raffles for purposes of fundraising. (Cal. Const. Art IV. Sec. 19(f).)

14) Defines a "lottery" as any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, upon any agreement, understanding, or expectation that it is to be distributed of disposed of by lot or chance, whether called a lottery, raffle, gift enterprise, or by whatever name the same may be known. (Pen. Code, § 319.)

15) Provides that persons convicted of specified serious or violent misdemeanors are prohibited from possessing 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 felony with imprisonment up to three years. (Pen. Code, § 29805 (a).)

16) Permits any person convicted of a specified misdemeanor, before that misdemeanor was added to the list of misdemeanors triggering a 10-year prohibition, to petition for relief. In deciding the petition, a court must ensure the petitioner is not otherwise prohibited, and may consider the interest of justice, any relevant evidence, and the totality of the circumstances. (Pen. Code, § 29860.)

EXISTING FEDERAL LAW: Provides in part that private property shall not be taken for public use without just compensation. (U.S. Const., 5th Amend.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "As we are witnessing the proliferation of tragic gun violence, it is our moral obligation to ensure public safety by enacting comprehensive firearm reform policies. The data tells us that when compared to households without firearms, households with firearms have a higher risk of suicide and accidental firearm injury to members of that household. Currently there is no review for people coming off the prohibited gun list. An easier path to gun storage and through risk assessment will make California safer. SB 368 will save lives."

2) **Suicide and Firearms:** According to statistics gathered from the Centers for Disease Control and Prevention (CDC) in 2021, there were 48,830 gun-related deaths in the United States, of those, 26,328 were suicides. (Pew Research Center. *What the data says about gun deaths in the U.S.* (hereafter *Pew Gun Death Data*) (Apr. 26, 2023.) <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/> [as of Jun. 22, 2023].) Although there is no difference in the rate of mental illness or suicidal ideation in households with and without firearms, the risk of completed suicide is especially high for people in firearm-owning households. (Gibbons et al. *Legal Liability for Returning Firearms to Suicidal Persons Who Voluntarily Surrender Them in 50 States*. (hereafter *Legal Liability for Returning Firearms*) (May 2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144456/> [as of Jun. 22, 2023].) Some studies have noted that the increased risk for suicide is due to the availability of a particularly lethal method of suicide such as a firearm. (*Ibid.*) As a result, helping people survive periods of suicidal ideation by reducing their access to a lethal method, such as a firearm, can likely help many people survive. (*Ibid.*) One way to do this is to lower barriers in transferring a firearm, as many states require that firearms generally only be transferred through a firearms dealer. (*Ibid.*)

   This bill establishes a process by which an individual who may be suicidal can turn in their firearm to a firearms dealer for storage.

3) **Fifth Amendment Takings Issue**: The Fifth Amendment states in part that private property shall not, "be taken for public use, without just compensation." (U.S. Const., 5th Amend.) This portion of the Fifth Amendment is commonly referred to as the "takings clause." The intent behind the takings clause, "is to prevent the government from 'forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole.'" (*Laza v. City of Palestine* (hereafter *Laza*) (2022) U.S. Dist. 65321 at 31 [quoting *Eastern Enterprises v. Apfel* (1998) 524 U.S. 498, 522].)

   Protecting private property is indispensable to the promotion of individual freedom. " 'Property must be secured, or liberty cannot exist.' " (*Cedar Point Nursery v. Hassid* (hereafter *Cedar Point*) (2021) 141 S.Ct. 2063, 2071.) The U.S. Supreme Court has stated that the protection of property rights is necessary to empower people, " 'to shape and plan their own destiny in a world where governments are always eager to do so for them.' " (*Id.* at 2071 [quoting *Murr v. Wisconsin* (2017) 582 U.S. 383, 394].)

   There are different ways in which a government can "take" a property. Under the takings clause, "a taking may occur not only where the government directly appropriates private property, but also may arise from an economic regulation—a 'public program adjusting the benefits and burdens of economic life to promote the common good.' " (*Laza, supra*, U.S. Dist. at 31-32.) When considering whether a regulatory taking has occurred, courts generally consider the economic impact on the claimant, the extent to which the regulation interferes with the claimant's distinct investment-backed expectations, and the character of the governmental action. (*Id.* at 32 [quoting *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124].)

   However, "[w]henever a regulation results in a physical appropriation of property, a *per se* taking has occurred..." (*Cedar Point, supra*, 141 S. Ct. 2072.) The right to exclude is one of the most important property ownership rights. (*Ibid.*) The right to exclude should not be

treated as an empty formality, subject to modification at the government's pleasure. (*Id.* at 2077.) "Given the central importance to property ownership of the right to exclude, it comes as little surprise that the Court has long treated government-authorized physical invasions as takings requiring just compensation." (*Id.* at 2073.) Such scenarios are often described as servitudes or easements. (*Ibid.*) Servitudes and easements are takings whether they are intermittent or continuous, and the size and duration of the appropriation bear only on the amount of compensation. (*Id.* at 2074.) One case of a physical taking was when the government required raisin growers to physically set aside a portion of their crop, free of charge, so that the government could otherwise sell, donate to charity, or otherwise allocate it. (*Horne v. Dep't of Agric.*(2015) 576 U.S. 351, 354.) In stating that it was a clear physical taking, the Court noted that people do not expect their property to be actually occupied or taken away. (*Id.* at 361.) Another case found a per se taking when the government required agricultural employers to allow union organizers onto their land for a certain period of time. (*Cedar Point, supra,* 141 S.Ct. at 2080.)

This bill would require firearm dealers to store a firearm transferred to them by an owner, if the firearm is in danger of being used to commit suicide. This possibly constitutes a taking in that it infringes upon a firearm dealer's "right to exclude." (*Cedar Point, supra,* 141 S. Ct. at 2072.) Firearm dealers are businesses typically run by private citizens, and although regulated by the government, they do not operate as an arm of the government. This bill would force private business owners to apportion a part of their premise space to keep other people's firearms. As mentioned above, such regulations are likely takings regardless of their frequency, duration, or size. (*Id.* at 2074.) Is this a situation where the government is "forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole"? (*Armstrong v. U.S.* (1960) 364 U.S. 40, 49.)

If this bill does in fact constitute a taking, then just compensation would need to be provided. (*Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 186.) Even if this bill is amended to allow for some type of reimbursement, determining the amount is difficult. The guiding principle in calculating just compensation is to reimburse an owner for the interest in property that has been taken. (*Id.* at 186.) Although fair market value is normally an accepted standard, it is not an absolute standard nor an exclusive method of valuation since the determination of value cannot be reduced to inexorable rules. (*Ibid.*) Considerations relevant to this bill will certainly include what the associated costs would be with storing the firearm and processing the transaction, but could it also include potential liability issues.

4) **Liability Issues**: Currently, state law allows a firearm to be transferred without going through a firearms dealer if it is to prevent its use in a suicide and the transferee keeps the firearm unloaded and secure, among other things. (Pen. Code, § 27882.) This bill seeks to further lower barriers to transferring a firearm in instances of suicidal ideation by requiring firearm dealers to accept the firearm and store it, as specified. However, a large issue with temporary transfers is that they do not clearly define what, if any, liability attaches to the transferee for transfer-back of firearms after the individual's suicidal crisis is over. (*Legal Liability for Returning Firearms, supra.*) One study of eight Western states about their willingness to offer voluntary storage for suicidal individuals found that 77% of law enforcement and 67% of firearm retailers were willing to provide storage. (*Ibid.*) However, another study in the same eight states found that 73% of firearm retailers cited liability concerns in returning the firearm, 78% cited liability in storing it, and 81% cited concerns about determining the safety of returning firearms. (*Ibid.*)

Case law also does not generally address return liability for temporarily transferred firearms. (*Legal Liability for Returning Firearms, supra.*) Generally firearm manufacturers and dealers have been protected from liability for harms committed with their products under the Protection of Lawful Commerce in Arms Act of 2005, however, there does not appear to be a law similar that limits the liability of good Samaritans and entities that temporarily hold firearms for at-risk persons. (*Ibid.*) If this bill is going to require firearm dealers to interact with potentially armed suicidal individuals, should liability concerns also be addressed?

5) **Argument in Support**: According to the *California Federation of Teachers*, "As mental health crises continue to rise, it is imperative that we provide alternative storage to remove firearms from households. When compared to households without firearms, households that have firearms face a higher risk of homicide, suicide, and accidental firearm injury of a household member. The use of firearms is a common means of suicide. Studies have analyzed the effect of a policy change in the Israeli Defense Forces reducing adolescents' access to firearms on rates of suicide. Following the policy change, suicide rates decreased significantly by 40%. Most of this decrease was due to decrease in suicide using firearms over the weekend. There were no significant changes in rates of suicide during weekdays. The conclusion was simple - decreasing access to firearms significantly decreases rates of suicide among adolescents. The results of this study illustrate the bill's efficacy."

6) **Argument in Opposition**: According to the *Gun Owners of California*, "This requirement is grossly unfair to dealers who could be exposed to significant and unimaginable liability issues by complying with this statute. Further, if a dealer does not have the adequate physical capacity to accept the transferred firearms, they would be in violation of state law.

"Essentially, this legislation would hold lawful California firearms dealers hostage by the state; if a dealer cannot comply with such a mandate to store the firearm of individuals with whom they have no relationship, whether commercial or personal, they could very well lose their license. GOC shares the concerns that firearms should be removed from those who are a suicide risk, and we believe it is far more appropriate for law enforcement agencies be the receiving parties for such transfers.

"Finally, this bill will prohibit firearms dealers from holding an in-store raffle as a means for someone to win a gun. Since the winners of such gun raffles still have to comply with all of the federal and state transfer laws including 10 day waiting period, background checks and pay all appropriate fees, this bill is nothing more than punitive and a spiteful attempt to do harm to lawful business owners."

7) **Prior Legislation**:

   a) SB 172 (Portantino) Chapter 840, Statutes of 2019, among other things, allowed a firearm to be transferred without use of a firearm dealer, if done so to prevent a suicide.

   b) SB 376 (Portantino) Chapter 738, Statutes of 2019, among other things, outlined transfer requirements and exemptions for firearms at auctions, raffles, or similar events.

   c) AB 2817 (Santiago) of the 2017-2018 Legislative Session, would have, among other things, allowed a firearm to be transferred without use of a firearm dealer if done so to

prevent a suicide. AB 2817 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Federation of Teachers
California Federation of Teachers Afl-cio
City of Alameda
March for Our Lives Action Fund
Women Against Gun Violence

Opposition

California Rifle and Pistol Association, INC.
Gun Owners of California, INC.

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

Amended Mock-up for 2023-2024 SB-368 (Portantino (S))

Mock-up based on Version Number 98 - Amended Senate 3/30/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) (1) In order to assist in the investigation of crime, the prosecution of civil actions by city attorneys pursuant to paragraph (3) of subdivision (b), the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all of the following:

(A) All copies of fingerprints.

(B) Copies of licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215.

(C) Information reported to the Department of Justice pursuant to subdivision (e) of Section 18120, Section 26225, 26556, 26892, 27875, 27920, 27966, 28050, 29180, 29830, or paragraph (2) of subdivision (e) of Section 32000.

(D) Dealers' Records of Sale of firearms.

(E) Reports provided pursuant to Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or pursuant to any provision listed in subdivision (a) of Section 16585.

(F) Forms provided pursuant to Section 12084, as that section read prior to being repealed on January 1, 2006.

(G) Reports provided pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6, that are not Dealers' Records of Sale of firearms.

(H) Information provided pursuant to Section 28255.

(I) Reports of stolen, lost, found, pledged, or pawned property in any city or county of this state.

(2) The Attorney General shall, upon proper application therefor, furnish the information to the officers referred to in Section 11105.

(b) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to the following provisions as to firearms and maintain a registry thereof:

(A) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(D) Any provision listed in subdivision (a) of Section 16585.

(E) Former Section 12084.

(F) Section 28255.

(G) Section 29180.

(H) Paragraph (2) of subdivision (e) of Section 32000.

(I) Any other law.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular firearm as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former Section 12084, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585, Section 28255 or 29180, or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular firearm and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to any provision listed in subdivision (a) of Section 16585 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular firearm acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm, model name or number if stamped on the firearm, and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm, or, if the firearm is not a handgun and does not have a serial number or any identification number or mark assigned to it, that shall be noted.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105, to a city attorney prosecuting a civil action, solely for use in prosecuting that civil action and not for any other purpose, or to the person listed in the registry as the owner or person who is listed as being loaned the particular firearm.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

(c) (1) If the conditions specified in paragraph (2) are met, any officer referred to in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 11105 may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to any of the following:

(A) Section 26225, 26556, 27875, 27920, 27966, or 29180.

(B) Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4 of Part 6.

(C) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6.

(D) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part 6.

(E) Article 2 (commencing with Section 28150) of Chapter 6 of Division 6 of Title 4 of Part 6.

(F) Article 5 (commencing with Section 30900) of Chapter 2 of Division 10 of Title 4 of Part 6.

(G) Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6.

(H) Any provision listed in subdivision (a) of Section 16585.

(I) Paragraph (2) of subdivision (e) of Section 32000.

(2) Information may be disseminated pursuant to paragraph (1) only if all of the following conditions are satisfied:

(A) The subject of the record has been arraigned for a crime in which the victim is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the Family Code and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Prevention Act set forth in Division 10 (commencing with Section 6200) of the Family Code.

(B) The information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court.

(C) Whenever a law enforcement officer disseminates the information authorized by this subdivision, that officer or another officer assigned to the case shall immediately provide the victim of the crime with a "Victims of Domestic Violence" card, as specified in subparagraph (H) of paragraph (9) of subdivision (c) of Section 13701.

(3) The victim or person to whom information is disseminated pursuant to this subdivision may disclose it as they deem necessary to protect themselves or another person from bodily harm by the person who is the subject of the record.

(d) All information collected pursuant to this section shall be maintained by the department and shall be available to researchers affiliated with the California Firearm Violence Research Center at UC Davis for academic and policy research purposes upon proper request and following approval by the center's governing institutional review board when required. At the department's discretion, and subject to Section 14240, information collected pursuant to this section may be provided to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education Accreditation for the study of the prevention of violence and following approval by the institution's governing institutional review board or human subjects committee when required. Material identifying individuals shall only be provided for research or statistical activities and shall not be transferred, revealed, or used for purposes other than research or statistical activities, and reports or publications derived therefrom shall not identify specific individuals. Reasonable costs to the department associated with the department's processing of such data may be billed to the researcher. If a request for data or letter of support for research using the data is denied, the department shall provide a written statement of the specific reasons for the denial.

SEC. 2. Section 25555 of the Penal Code is amended to read:

25555. (a) Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with or utilize Section 26556, 26892, 27875, 27920, 27925, 29810, or 29830, as it pertains to that firearm.

(b) Section 25400 does not apply to or affect the transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (e) of Section 32000 as it pertains to that firearm.

(c) Section 25400 does not apply to, or affect the transportation of, a firearm by a person in order to comply with Section 6389 of the Family Code.

SEC. 3. Section 26379 of the Penal Code is amended to read:

26379. Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

(a) Complying with Section 27560 or 27565, as it pertains to that handgun.

(b) Section 28000, as it pertains to that handgun.

(c) Section 27850 or 31725, as it pertains to that handgun.

(d) Complying with Section 27875, as it pertains to that handgun.

(e) Complying with or utilizing Section 26556, 26892, 27920, 27925, 29810, or 29830, as it pertains to that handgun.

(f) Complying with paragraph (2) of subdivision (e) of Section 32000, as it pertains to that handgun.

(g) Complying with Section 6389 of the Family Code, as it pertains to that handgun.

SEC. 4. Section 26405 of the Penal Code is amended to read:

26405. Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when carried within a place of business, a place of residence, or on private real property, if that person, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private real property owned or lawfully occupied by that person.

(b) By a person when carried within a place of business, a place of residence, or on private real property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605, may carry a firearm within that place of business, place of residence, or on that private real property owned or lawfully occupied by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of

travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If 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 the person's life or safety. This subdivision may 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 Section 26400, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that they were in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(i) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using firearms that are not handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

(k) Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(l) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

(m) Within 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.

(n) Within a school zone, as defined in Section 626.9, if that carrying is not prohibited by Section 626.9.

(o) When in accordance with the provisions of Section 171b.

(p) By a person while engaged in the act of making or attempting to make a lawful arrest.

(q) By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910.

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following:

(1) Complying with Section 27560 or 27565, as it pertains to that firearm.

(2) Section 28000, as it pertains to that firearm.

(3) Section 27850 or 31725, as it pertains to that firearm.

(4) Complying with Section 27875, as it pertains to that firearm.

(5) Complying with or utilizing Section 26556, 26892, 27920, 27925, 27966, 29810, or 29830, as it pertains to that firearm.

(6) Complying with Section 6389 of the Family Code, as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction, raffle, or similar event of a nonprofit public benefit or mutual benefit corporation at which firearms are auctioned, raffled, or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned, raffled, or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(3) The unloaded firearm that is not a handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26915, inclusive.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c.

(ab) Pursuant to Section 171d.

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7.

(ad) On publicly owned land, if the possession and use of an unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5.

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(ai) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

SEC. 5. Section 26577 of the Penal Code is amended to read:

26577. Section 26500 does not apply to a delivery or transfer of firearms made to a dealer pursuant to Section 26892 or 29830 for storage by that dealer.

SEC. 6. Section 26892 is added to the Penal Code, to read:

26892. (a) A licensee shall accept a firearm for storage from an individual if all of the following conditions are met:

(1) The firearm is voluntarily and temporarily transferred to the licensee for safekeeping to prevent it from being accessed or used to attempt suicide by the transferor or another person that may gain access to it in the transferor's household.

(2) The licensee does not use the firearm for any purpose, except storage.

(3) The duration of the loan is limited to that amount of time reasonably necessary to prevent the harm described in paragraph (1).

(b) (1) A licensee may accept a firearm for storage from an individual for a purpose that is not unlawful that is not otherwise set forth in subdivision (a) or Section 29830.

(2) A licensee who accepts a firearm for storage pursuant to this subdivision is not to use the firearm for any purpose other than storage.

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

(d) If the dealer cannot legally return the firearm to the transferor or person loaning the firearm, then the following procedure shall apply:

(1) The transferor or person loaning the firearm may request, and the dealer shall grant, that the dealer retain possession of the firearm for a period of up to 45 days so that the transferor or the person loaning the firearm may designate a person to take possession of that firearm in accordance with Section 27540. This 45-day period shall be in addition to the waiting period described in Sections 26815 and 27540, and any time necessary to process a transaction.

(2) If, before the end of the 45-day period, the transferor or person loaning the firearm designates a person to receive the firearm and that person completes an application to purchase, the dealer shall process the transaction in accordance with the provisions of Section 27540.

(3) If the transferor or person loaning the firearm, does not request that the firearm be held by the dealer pursuant to this subdivision, the firearm cannot be delivered to the designated person, or the 45-day period expires without action by the person loaning the firearm, the dealer, shall forthwith deliver the firearm to the sheriff of the county or the chief of police or other head of a municipal police department of any city or city and county, where the dealership is located, who shall then dispose of the firearm in the manner provided by Sections 18000, 18005, and 34000.

(g) (1) A dealer who takes possession of a firearm pursuant to this section shall within 48 hours of taking possession of the firearm, notify the Department of Justice in a manner and format prescribed by the department.

(2) If a dealer retains possession of a firearm pursuant to subdivision (d), the dealer shall within 72 hours after retaining possession of the firearm, notify the Department of Justice in a manner and format prescribed by the department.

SEC. 7. Section 26894 is added to the Penal Code, to read:

26894. (a) A licensee shall not offer an opportunity to win an item of inventory in a game dominated by chance.

(b) Subdivision (a) shall not apply to a raffle conducted by a licensee organized as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or as a mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code,

if the nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions, raffles, or similar events at which firearms are auctioned or raffled off to fund the activities of that corporation or the local chapters of the corporation.

SEC. 8. 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) Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who is convicted on or after January 1, 2024, of a misdemeanor violation of this section, 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. 9.** Section 29806 is added to the Penal Code, to read:~~

~~**29806.** (a) This section shall apply only to those persons who are prohibited from owning, purchasing, receiving, possessing, or having under their custody or control a firearm pursuant to Section 29805 due to a conviction on or after January 1, 2024.~~

~~(b) The Department of Justice shall create an evaluation process to determine whether an extension of a prohibition imposed pursuant to Section 29805 is warranted.~~

~~(c) Prior to the end of a person's 10-year prohibition pursuant to Section 29805, the Department of Justice shall review whether the prohibition should be extended and provide notice and opportunity to be heard to the person. The Department of Justice shall establish a process for the person to appeal any extension of the prohibition instituted the department.~~

SEC. 10. Section 32110 of the Penal Code is amended to read:

32110. Article 4 (commencing with Section 31900) and Article 5 (commencing with Section 32000) shall not apply to any of the following:

(a) The sale, loan, or transfer of any firearm pursuant to Chapter 5 (commencing with Section 28050) of Division 6 in order to comply with Section 27545.

(b) The sale, loan, or transfer of any firearm that is exempt from the provisions of Section 27545 pursuant to any applicable exemption contained in Article 2 (commencing with Section 27600) or Article 6 (commencing with Section 27850) of Chapter 4 of Division 6, if the sale, loan, or transfer complies with the requirements of that applicable exemption to Section 27545.

(c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 32000.

(d) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purposes of the service or repair of that firearm.

(e) The return of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, to its owner where that firearm was initially delivered in the circumstances set forth in subdivision (a), (d), (f), (i), (l), or (m).

(f) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purpose of a consignment sale or as collateral for a pawnbroker loan.

(g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(h) The sale, loan, or transfer of any semiautomatic pistol that is to be used solely as a prop during the course of a motion picture, television, or video production by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(i) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.

(j) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, where the firearm is being loaned by the licensee to a consultant-evaluator.

(k) The return of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, where it was initially delivered pursuant to subdivision (j).

(l) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person to a person licensed pursuant to Sections 26700 to 26915, inclusive, for the purposes of storage of that firearm pursuant to Section 26892 or 29830.

(m) The delivery of a pistol, revolver, or other firearm capable of being concealed upon the person by a person licensed pursuant to Sections 26700 to 26915, inclusive, to a person other than the owner pursuant to Section 26892.

SEC. 11. 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. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SB 377 (Skinner) – As Amended May 18, 2023

SUMMARY: Removes peace officers' ability, in their personal capacity, to purchase unsafe handguns and to purchase a firearm without being subject to the 10-day waiting period. Specifically, **this bill**:

1) Removes the exemption for a peace officer purchasing a firearm in their individual capacity to not comply with the 10-day waiting period.

2) Exempts law enforcement agencies from the 10-day waiting period only if the firearm is purchased by the agency, received by an authorized law enforcement representative, is used exclusively by that agency, and the authorized law enforcement representative provides written authorization from the head of the agency.

3) Defines "law enforcement agency" as any agency or department of the state or any political subdivision thereof that employs peace officers, as specified.

4) Defines "written authorization" as verifiable written certification from the head of an agency by which the purchaser is employed, which also identifies the employee as an individual authorized to accept delivery of the firearm and states that the firearm will be exclusively used by the agency.

5) Provides that peace officers may no longer purchase unsafe handguns in their personal capacity.

6) Requires specified law enforcement agencies to maintain records of any unsafe handguns they own or that is carried by a member of the agency.

7) Requires the records to include purchase records, invoices, and receipts associated with the acquisition of the firearm and states that these records must be kept a minimum of three years after acquisition.

8) Authorizes the Department of Justice (DOJ) to conduct inspections of any agencies or firearms dealers to ensure compliance with these provisions.

EXISTING LAW:

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

2) Provides that no firearm shall be delivered within 10 days of the application to purchase, or as otherwise specified. (Pen. Code § 26815, subd. (a).)

3) Exempts full-time peace officers from the 10-day waiting period, if they are authorized to carry firearms as part of their duty and provide proper identification, as specified. (Pen. Code, § 26950, subd. (a).)

4) Defines "proper identification" as a verifiable written certificate from the officer's agency chief that identifies the officer as a peace officer authorized to carry firearms in the performance of their duties, and authorizes the purchase or transfer. (Pen. Code, § 26950, subd. (b)(1).)

5) Prohibits, in general, the manufacture, importation, sale, or transfer of an "unsafe handgun." (Pen. Code, § 32000.)

6) Defines an "unsafe handgun" in part, as a firearm capable of being concealed upon the person. (Pen. Code, § 31910.)

7) Specifies further that a handgun is unsafe if, among other things, it does not:

   a) Have a positive manually operated safety device, as specified;

   b) Meet the firing requirement, as specified;

   c) Meet the drop safety requirement, as specified;

   d) Have a chamber load indicator, as specified; and,

   e) Have microstamping technology, as specified.

8) Requires the DOJ to compile and maintain a roster of all handguns determined not to be unsafe. (Pen. Code, § 32015, subd. (a).)

9) Authorizes the DOJ to remove a firearm from the unsafe handgun roster if a manufacturer fails to pay a fee, even if the handgun otherwise meets the requisite standards. (Pen. Code, § 32015, subd. (b)(2).)

10) Authorizes the purchase of an unsafe handgun by sworn members of a police department, sheriff's office, DOJ, marshal's office, Department of Corrections and Rehabilitation, California Highway Patrol, district attorney's office, federal law enforcement agency, or military or naval forces for use in the discharge of their official duties, and specifies that the sale to, or purchase by, the sworn members is not prohibited. (Pen. Code, § 32000, subd. (b)(4).)

11) Authorizes the sale of an unsafe handgun, as a service weapon, to sworn members of the following entities who have completed specified peace officer firearms training and complete a live-fire qualification at least once every six months:

a) The Department of Parks and Recreation;

b) The Department of Alcoholic Beverage Control;

c) The Division of Investigation of the Department of Consumer Affairs;

d) The Department of Motor Vehicles;

e) The Fraud Division of the Department of Insurance;

f) The State Department of State Hospitals;

g) The Department of Fish and Wildlife;

h) The state Department of Developmental Services;

i) The Department of Forestry and Fire Protection;

j) A county probation department;

k) The Los Angeles World Airports, as defined;

l) A K-12 public school district for use by a school police officer;

m) A municipal water district for use by a park ranger;

n) A county for use by a welfare fraud investigator or inspector;

o) A county for use by the coroner or deputy coroner;

p) The Supreme Court and the courts of appeal for use by marshals, bailiffs, and coordinators of security for the judicial branch, as specified;

q) A fire department or fire protection agency of a county, city, city and county, district, or the state for use by specified employees;

r) The University of California Police Department, or the California State University Police Departments, as defined;

s) A California Community College Police Department;

t) A harbor or port district or other entity employing peace officers as specified, the San Diego Unified Port District Harbor Police, and the Harbor Department of the City of Los Angeles;

u) A local agency employing park rangers, as specified; and,

v) The Department of Cannabis Control. (Pen. Code, § 32000, subd. (b)(6)(A)-(V).)

12) Authorizes the sale of an unsafe handgun, as a service weapon, to the following entities with sworn member who have completed specified peace officer firearms training and complete a live-fire qualification at least once every six months:

   a) California Horse Racing Board;

   b) State Department of Health Care Services;

   c) State Department of Public Health;

   d) State Department of Social Services;

   e) Department of Toxic Substances Control;

   f) Office of Statewide Health Planning and Development;

   g) Public Employees' Retirement System;

   h) Department of Housing and Community Development;

   i) Investigators of the Department of Financial Protection and Innovation;

   j) Law Enforcement Branch of the Office of Emergency Services;

   k) California State Lottery; and,

   l) Franchise Tax Board. (Pen. Code, § 32000, subd. (b)(7)(A)(i)-(xii).)

13) Prohibits sworn members who must use their unsafe handgun as a service weapon, from selling the firearm to any person not able to otherwise purchase an unsafe handgun. Otherwise authorizes sworn members of a police department, sheriff's office, and other sworn members in the same category to resell any unsafe handgun they have purchased to any person. (Pen. Code, § 32000, subd. (c)(1).)

14) Requires all persons or entities who have obtained an unsafe handgun pursuant to specified exemptions, to notify the DOJ of any sale or transfer within 72 hours, and requires the DOJ to maintain a database of such unsafe handguns. (Pen. Code, § 32000, subd. (e)(2),)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California has outlawed the purchase of certain handguns that have been deemed unsafe or illegal by the California Department of Justice. There's no good reason to allow an exception when we know these weapons are unsafe. SB 377 closes the loophole that now allows law enforcement to buy these illegal guns. Law enforcement officers are not allowed to purchase other illegal products in the state. Guns should be no different. Further, a recent report from Brady and investigative reporting has revealed that state and local law enforcement agencies in California have been

purchasing guns and equipment from dealers who have violated state and federal firearm laws. Taxpayer money should not be spent on companies who do not comply with all state and federal firearm laws – laws that are intended to protect against gun violence."

2) **Unsafe Handgun Law and Officer Purchase Exemptions**: In 1999, the California Legislature enacted the Unsafe Handgun Act (SB 15, Polanco, Chapter 248, Statutes of 1999), which made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, where "unsafe handgun" was defined as a handgun that: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test. The law also required DOJ to compile and publish a roster listing all of the handguns and concealable firearms that they deem "not unsafe" and which are certified for sale in the state. Subsequent reforms added new design safety requirements for semiautomatic pistols and a microstamping requirement for all handguns. (SB 489 (Scott) Chapter 500, Statutes of 2003; AB 1471 (Feuer) Chapter 572, Statutes of 2007.)

   California's Unsafe Handgun Law contains a tiered exemption scheme for specified law enforcement entities, establishing three groups (only the first and second are relevant to this bill) of entities that are subject to varying prerequisites for purchase, eligibility to purchase for personal use, and restrictions on resale. The first, most permissive tier of exempt law enforcement entities and individuals includes the DOJ, police departments, sheriff's officials, marshal's offices, the California Department of Corrections and Rehabilitation, CHP, any district attorney's office, any federal law enforcement agency, and the military or naval forces of the United States or California. Sworn members belonging to these entities may purchase non-roster handguns for personal use and may generally sell or transfer the non-roster handgun to any firearm eligible purchaser at a licensed firearm dealer. (Pen. Code, § 32000, subd. (a)(4); DOJ. *State Exemptions for Authorized Peace Officers.* <https://oag.ca.gov/firearms/exemptpo> [as of Jun. 21, 2023].)

   Sworn members belonging to the second tier of exempt law enforcement entities, such as the Department of Parks and Recreation or the Department of Motor Vehicles, are permitted to purchase off roster handguns solely for use as service weapons, as long as they have completed specified training, and may only resell the firearms to exempted individuals or agencies. (Pen. Code, § 32000, subds. (b)(6) & (c)(1).) The third tier, which includes the California Horse Racing Board, only exempts the entities, and not the individual sworn member, to purchase an unsafe handgun, and permits the entities to resell the firearms to exempted individuals or entities. (Pen. Code, § 32000, subds. (b)(7) & (c)(1).)

   In part, this bill would prohibit the sale of unsafe handguns to members of tier one for use in their personal capacity, and would further specify that members of tier two cannot purchase an unsafe handgun in a personal capacity as well.

   Based on some of the material in the background sheet provided by the author, this bill would limit the ability to purchase unsafe handguns, as there have been growing concerns that police officers are purchasing non-roster firearms and reselling them illegally. In 2017, the head of the Los Angeles office of the federal Bureau of Alcohol Tobacco, Firearms and Explosives (ATF) sent a memo to Southern California police chiefs and sheriffs informing them that the agency had learned of officers buying and reselling guns for a profit in possible violation of federal firearms laws. According to the memo, the ATF discovered officers who

had purchased more than 100 non-roster firearms that were subsequently transferred to non-law enforcement individuals. (San Diego Union Tribune. *ATF warns Southern California law enforcement officers may be illegally selling guns.* (Apr. 12, 2017) <https://www.sandiegouniontribune.com/news/public-safety/sd-me-atf-memo-20170412-story.html> [as of Jun. 21, 2023].) In 2022, federal prosecutors launched an investigation into a high-ranking LAPD officer and an L.A County sheriff's deputy who in prior years sold nearly 100 firearms without a license, many of which were non-roster handguns with high-capacity magazines. (Los Angeles Times. *Firearms Sales by LAPD captain, LASD deputy referred to feds for possible charges*. (Mar. 23, 2022) <https://www.latimes.com/california/story/2022-03-23/firearms-sales-lapd-captain-lasd-deputy-referred-to-feds-for-possible-charges> [as of Jun. 21, 2023].)

Some opponents of the bill, such as the Los Angeles Police Protective League, have pointed out that, although they are supportive in trying to limit the illegal reselling of firearms, they believe this bill's provisions are too broad. The argument is that officers generally have unique safety needs in that their job requires them to frequently come into contact with some of the more dangerous individuals in their community, and that officers subsequently have to live and be off-duty in that same community. As the current roster does not contain newer firearms, there may be newer features and technology not available to officers who may need a wider range of choice based on dangers resulting from their profession. In addition, a firearm may be comply with all the safety requirements, but if the manufacturer fails to pay the DOJ a roster fee, the firearm could be removed from the roster. (Pen. Code, § 32015, subd. (b)(2).) That said, supporters of the bill believe that although officers might prefer to have a wider range of choice, they do not need to have a wider range of choice. Supporters point out that there is an ample variety of handguns to choose from without needing an exemption.

3) **Unsafe Handgun Recordkeeping and DOJ Inspection Authority**: AB 2699 (Santiago), Chapter 289, Statutes of 2020, was the most recent measure modifying California's rostering of handguns that the DOJ deems "not unsafe." That measure added additional law enforcement agencies to the list that could purchase unsafe handguns (tier three member), placed limits on the use and transfer of the unsafe handguns, and required the DOJ to account for and maintain a database of the unsafe handguns. However, existing law neither requires law enforcement agencies to maintain records of regarding unsafe handguns, nor does it explicitly authorize the DOJ to conduct inspections of agencies or licensed firearms dealers to compile and maintain the database.

   This bill would require those agencies to maintain records of any unsafe handgun owned by the agency or carried on duty by a member of the agency, specifies the records to be maintained, and requires the records to be kept for a minimum of three years from the date a firearm was purchased or received. Additionally, this bill would authorize the DOJ to conduct inspections of those agencies or any licensed gun dealer to ensure compliance with the law.

4) **Argument in Support**: According to *Brady United Against Gun Violence*, "Some law enforcement officers and members of other agencies might prefer unsafe handguns but they don't need to use unsafe handguns. With almost 800 weapons on the DOJ roster, there is ample variety to choose from. Unsafe handguns endanger not only the state and local employees who use them but also the general public that they serve, who may be the victims

if an unsafe gun misfires or fires when dropped. If state and local agencies and officials who are trained in the use of firearms choose to purchase weapons manufactured without UHA-mandated safety mechanisms, they send a dangerous message: unsafe weapons can and should be used and are superior to the other, safer, choices.

"With messaging like this, it is no surprise that these off-roster weapons do not remain solely in the hands of trained law enforcement or other exempt individuals. Whether through theft of officers' service weapons or trafficking and illegal weapons sales by officers, these unsafe guns can make it into the hands of untrained civilians and criminal offenders alike. Their lack of safety features increases the likelihood of accidents, like the fatal shooting that took place on Pier 14 in San Francisco with a stolen service weapon. Purchasing weapons that are sold illegally by a police officer may also allow well-meaning civilians to mistakenly believe that they are legally acquiring their firearms.

"Allowing law enforcement and other state and local agencies to purchase off-roster guns without restriction has had additional negative effects in California by disincentivizing firearms manufacturers from producing new handgun models that comply with UHA standards. Law enforcement agencies and officers are among the biggest purchasers of handguns. As a result, with the current exemptions in place, manufacturers have a huge consumer base in California that continues to purchase handguns that do not meet UHA safety standards. The manufacturers are not motivated to improve their new models to meet current UHA standards because they can still profit from selling unsafe guns to state agencies and officials, even though they cannot sell their new models to the general public. By greatly narrowing the exemptions that make it possible for manufacturers to turn a profit while refusing to comply with California's safety standards, the industry may finally incorporate all UHA requirements, and introduce new, and more importantly, safer guns for sale in California. It is past time to narrow these exemptions and this bill would do just that by only allowing law enforcement agencies to purchase off-roster handguns."

5) **Argument in Opposition**: According to the *California Correctional Peace Officers Association*, "The addition of an applicable 10-day waiting period for certified peace officers to purchase a firearm will not improve public safety. As peace officers authorized to carry a firearm in the course of their duties, they are guaranteed to already have at least one firearm at their disposal, whether it be a personal firearm, or one issued by their department. Any possible reason for requiring an officer to wait the designated 10 days would be negated by their existing readily available access to firearms. No one will be made safer by this new restriction.

"Even more alarming is the removal of the exemption from California's roster of handguns certified for sale. Despite the penal code describing any handguns not on this roster as "unsafe," there is nothing inherently unsafe or dangerous about nearly all the handguns absent from the roster. As a matter of fact, all departments employing peace officers in the State of California use handguns the state considers to be unsafe, as there are no handgun models meeting California's current requirements. This new restriction will place severe limitations on a correctional officer's ability to train with the handguns they are assigned as duty weapons.

"I think everyone would agree that more training with a duty weapon would certainly result in better safety, improved handling, smoother operation, and refined skillsets. Our officers

often train on their own time, outside of the minimal mandated department training. This requires them to purchase identical handguns to the ones they are assigned as duty weapons if they are to maximize their training. It is important that they familiarize themselves and practice manipulating the handgun in a way that matches their assigned duty weapon. Without the ability to purchase one on their own, they would be forced to buy a different rostered gun with multiple minor differences in the controls, feel, and operation. These seemingly minor differences can cumulatively result major drawbacks when pressed into real life circumstances.

"These differences only become exacerbated for left-handed officers. Every current and modern line of duty use handguns today have ambidextrous controls. This enables left-handed shooters to perform necessary magazine changes or use the slide release without awkwardly attempting to utilize controls meant for right-handed shooters. None of these modern duty handguns are on the current roster. All our officers would be forced to purchase guns made for right-handed individuals. For left-handed officers, this not only creates a difficult situation for operating the handgun, but also introduces safety risks and opportunities for accidental discharges."

6) **Prior Legislation**:

a) AB 669 (Lackey), of the 2021-2022 Legislative Session, would have reinstated county probation departments and sworn members thereof, to purchase unsafe handguns. AB 669 was held in the Senate Public Safety Committee.

b) AB 2699 (Santiago), Chapter 289, Statutes of 2020, among other things, created a third tier of agencies that are exempt from the unsafe handgun purchase prohibitions and required the DOJ to maintain a database of unsafe handguns.

c) AB 1794 (Jones-Sawyer), of the 2019-2020 Legislative Session, would have authorized sworn members of certain agencies, such as the Horse Racing Board and the Department of Public Health to purchase unsafe handguns. AB 1794 was held in the Senate Appropriations Committee.

d) AB 1872 (Voepel), Chapter 56, Statutes of 2018, among other things, exempted harbor or port peace officers from the unsafe handgun purchase prohibitions.

e) AB 2165 (Bonta), Chapter 640, Statutes of 2016, among other things, created the second tier of agencies, including the Department of Parks and Recreation and Department of Motor Vehicles, to be exempted from the unsafe handgun prohibitions.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign California
Brady Campaign to Prevent Gun Violence
John Burton Advocates for Youth
March for Our Lives Action Fund

Youth Alive!

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California Correctional Peace Officers Association (CCPOA)
California Reserve Peace Officers Association
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 County Professional Peace Officers Association
Los Angeles Police Protective League
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association
Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: June 27, 2023
Counsel: Liah Burnley

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

SB 404 (Wahab) – As Amended May 18, 2023

As Proposed to Be Amended in Committee

SUMMARY: Creates a new misdemeanor of solemnizing a marriage or domestic partnership between a minor and another person, unless the marriage or domestic partnership has been approved by a court order. Specifically, **this bill**:

1) Provides that any person 18 or older who knowingly or willfully solemnizes a marriage or domestic partnership between a minor and another person is guilty of a misdemeanor.

2) Punishes the offense by imprisonment in the county jail for up to six months, a fine of $1,000, or by both.

3) Specifies that this new crime does not apply to the solemnization of a marriage or domestic partnership entered into after receiving a court order allowing the minor to marry or enter into a domestic partnership.

4) Provides that "solemnizes" has the same meaning as defined in the Family Code.

EXISTING LAW:

1) Defines "marriage" as a personal relation arising out of a civil contract between two persons, 18 years of age or older, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization. (Fam. Code, §§ 300 & 301.)

2) Defines "domestic partners" as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. A domestic partnership is established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State. (Fam. Code, § 297.)

3) Allows a person under 18 years of age to be issued a marriage license or to establish a domestic partnership upon obtaining a court order granting permission to the underage person or persons to marry or establish a domestic partnership, and with written consent of the parents of each person under 18 years of age, unless it appears to the satisfaction of the court that the minor has no parent or guardian, or has no parent or guardian capable of consenting. (Fam. Code, §§ 297.1 & 301-304.)

4) Provides that a marriage may be solemnized by a priest, minister, rabbi, or authorized person of any religious denomination who is 18 years of age or older. (Fam. Code, § 400.)

5) Sets forth the requirements of solemnization, including but not limited to, before solemnizing a marriage, the person solemnizing the marriage shall require the presentation of the marriage license. If the person solemnizing the marriage has reason to doubt the correctness of the statement of facts in the marriage license, the person must be satisfied as to the correctness of the statement of facts before solemnizing the marriage. (Fam. Code, §§ 420-426.)

6) States that every person authorized to solemnize marriage, who willfully and knowingly solemnizes any marriage forbidden by law, is guilty of a misdemeanor, punishable by fine of not less than $100 and not more than $1,000, or by imprisonment in not less than three months and no more than one year the county jail. (Pen. Code, § 359.)

7) States that every person authorized to solemnize any marriage, who solemnizes a marriage without first being presented with the marriage license, or who solemnizes a marriage without the authorization, or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk, or who willfully makes a false record of any marriage return, is guilty of a misdemeanor. (Pen. Code, § 360.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I firmly believe that the state of California should make every effort to protect children from opportunities for abuse and coercion. SB 404 takes a step in the right direction by ensuring that the individuals responsible for officiating and arranging minor marriages occurring outside of the legal bounds of the law, and its associated guardrails, are halted. In a state that believes we should put 'children on a path to a healthier future by focusing on their minds, bodies, and environments,' we all have a responsibility to ensure children maintain their rights to bodily and intellectual autonomy for healthy development."

2) **Legal Marriages and Domestic Partnerships Involving Minors:** In California, existing law authorizes a person under 18 years of age, upon obtaining a court order granting permission, to get married or to establish a domestic partnership. (Fam. Code, §§ 297.1 & 301-304). The law requires, among other things, a court order and written consent of at least one parent or guardian of each underage person. (*Ibid.*) The court order must be presented to the county clerk at the time the marriage license is issued. (*Ibid.*) It is a misdemeanor to solemnize a marriage without first being presented a marriage license. (Pen. Code, §§ 359, 360.)

   According to the Pew Research Center, approximately 5.5 of every 1,000 15- to 17-year-olds are married in California, based on census data from 2014. (Pew Research Center, *Child Marriage Is Rare in the U.S., Though This Varies by State* (Nov. 2016) <https://www.pewresearch.org/short-reads/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/> [June 13, 2023].) This is above the national average of 4.6. (*Ibid.*)

3) **This Bill Would Create a New Misdemeanor**: This bill would create a new misdemeanor of solemnizing a marriage or domestic partnership of a minor that has not been approved by a court order. The penalty for this new offense would be up to six months imprisonment in a county jail or by a fine of $1,000 or by both.

Increasing criminal penalties is often ineffective at deterring crime. Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment. (National Institute of Justice, *Five Things about Deterrence* (May 2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [June 12, 2023].)

In addition to jail, this bill allows a fine of $1,000, per each incident. Criminal fines and fees will contribute to the cycle of debt for underprivileged families most likely to be criminalized by this measure. (Brennan Center for Justice, *The Steep Costs of Criminal Justice Fees and Fines* (Nov. 21, 2019) <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines> [June 12, 2023].) Cases of child marriage exist in every racial or ethnic demographic, but are more prevalent among Latinos, Native Americans and immigrants. (*Child Marriage in the United States: How Common Is the Practice, And Which Children Are at Greatest Risk?* (June 2018) <https://i4y.berkeley.edu/sites/default/files/koski_and_heymann_2017_-_child_marriage_in_the__states-_how_common_is_the_practice_and_which_children_are_at_greatest_risk_.pdf> [June 18, 2023].) Consequently, this bill could have an unintended consequence of disproportionately criminalizing immigrants, religious and cultural minorities.

Rather than fines and incarceration, the Legislature could explore more effective means of deterring coercive and abusive child marriage practices, such as empowering communities and strengthen the systems that act as a safeguard against child marriage including education, legal aid, housing, financial support. (See, e.g. UNICEF, *Preventing Child Marriage* <https://www.unicef.org/eca/what-we-do/child-marriage> [June 12, 2023].)

4) **Argument in Support**: Argument in support is no longer applicable.

5) **Arguments in Opposition**: Arguments in opposition are no longer applicable.

6) **Related Legislation**: ACA 5 (Low) would repeal language in the California Constitution stating marriage is only between a man and woman and to include the fundamental right to marry. ACA 5 is pending in the Assembly Appropriations Committee.

7) **Prior Legislation**: SB 273 (Hill), Chapter 660, Statutes of 2018, created additional requirements and court oversight before a minor can legally marry or establish a domestic partnership in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Child Usadvocacy

Oppose

Global Hope 365
Tahirih Justice Center

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

Amended Mock-up for 2023-2024 SB-404 (Wahab (S))

Mock-up based on Version Number 97 - Amended Senate 5/18/23
Submitted by: Megan Mekelburg, Sen Wahab

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

SECTION 1. Section 289.1 is added to the Penal Code, to read:

289.1. (a) **Except as provided in subdivision (b),** any person **18 or older** who knowingly and willfully **solemnizes** ~~or arranges a religious union, or other secular nonlegally recognized~~ **a** marriage or domestic partnership, between a minor and another person is guilty of a misdemeanor and shall be punished by a fine of **not more than one thousand dollars ($1,000)** ~~not less than five thousand dollars ($5,000) and~~ **or** by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, per incident.

(b) This section does not apply to a marriage or domestic partnership entered into after receiving a court order pursuant to Section 297.1 or ~~304~~ **302** of the Family Code.

(c) For the purposes of this section, "solemnizes" has the same meaning as defined in Section 400 of the Family Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SB 452 (Blakespear) – As Amended May 18, 2023

SUMMARY: Authorizes handguns to be manufactured without being equipped with microstamping technology; but, commencing July 1, 2027, requires handguns to have microstamping technology before a firearms dealer can otherwise sell or transfer them at retail. Specifically, **this bill**:

1) Repeals the requirement that pistols manufactured or sold in the state contain microstamping technology.

2) Prohibits, commencing July 1, 2027, a firearm dealer from selling or transferring a pistol unless it has been verified to be equipped with microstamping technology.

3) Punishes a first violation with a fine of up to $1,000. Punishes a second violation with a fine of up to $5,000 and possible license revocation. Makes a third violation a misdemeanor and requires that the dealer's license be revoked.

4) Exempts a pistol manufactured prior to the effective date of these provisions.

5) Defines a "microstamping component" as a part of a semiautomatic pistol that will produce a microstamp on a part of an expended cartridge each time the pistol is fired.

6) Defines "microstamping-enabled pistol" as a semiautomatic pistol equipped with microstamping technology that has been installed in compliance with standards established by the Department of Justice (DOJ).

7) Defines "semiautomatic pistol" as a pistol with an operating mode that uses the explosive energy of a fired cartridge to extract the fired cartridge and chamber a fresh cartridge with each pull of the trigger.

8) Requires the DOJ, on or before July 1, 2025, to provide written guidance on the qualifying criteria and performance standards for microstamping.

9) Requires the DOJ, on or before July 1, 2026, to establish standards for the training and licensing of persons or entities so that they may engage in business of equipping pistols with microstamping technology.

10) Requires the DOJ, on or before July 1, 2026, to designate a state body to facilitate equipping pistols with microstamping technology.

11) Authorizes the DOJ to adopt regulations to effectuate these provisions.

12) States that a person who modifies a microstamping component of a firearm with the intent to prevent production of a microstamp is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine of not more than $1,000, or by both. The punishment for second or subsequent violations is imprisonment in the county jail for not more than one year, by a fine of not more than $2,000, or by both. Exempts pistols manufactured prior to the effective date of these provisions.

13) Specifies that replacing a microstamping component with another microstamping component for repair purposes is not prohibited.

EXISTING LAW:

1) Prohibits, in general, the manufacture, importation, sale, or transfer of an "unsafe handgun." (Pen. Code, § 32000.)

2) Defines an "unsafe handgun" in part, as a firearm capable of being concealed upon the person. (Pen. Code, § 31910.)

3) Specifies further that a handgun is unsafe if, among other things, it is a pistol and it does not:

   a) Have a positive manually operated safety device, as specified;

   b) Meet the firing requirement, as specified;

   c) Meet the drop safety requirement, as specified;

   d) Have a chamber load indicator, as specified; and,

   e) Have microstamping technology, as specified. (Pen. Code, § 31910, subd. (b)(1)-(6).)

4) Requires the DOJ to compile and maintain a roster of all handguns determined not to be unsafe. (Pen. Code, § 32015, subd. (a).)

5) States that handguns not listed on the DOJ roster prior to July 1, 2022, must be equipped with a microscopic array of characters used to identify the make, model, and serial number of the handgun, etched or imprinted in one or more places on the handgun which must transfer on each cartridge case fired by the handgun. This is known as microstamping technology. (Pen. Code, § 31910, subd. (b)(6)(A).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Microstamping is a reliable, cost-effective tool that imprints a unique code on shell casings fired from a firearm, providing law enforcement with valuable information to identify shooters and gun traffickers. This innovative technology enables law enforcement to identify the source of a crime gun and

would allow for more effective investigations into homicides and other firearm-related crimes.

"Gun-related incidents are driving the increase in violent crime within the state and across the country. In 2021, the percentage of statewide gun crimes solved by law enforcement was only 40%, including only 55% for homicides. SB 452 will help state and local law enforcement solve crimes, break cycles of gun trafficking, and increase trust in law enforcement by ensuring investigations are based on evidence rather than potential bias."

2) **Unsafe Handgun Law Overview**: In 1999, California, passed the "Unsafe Handgun Act," (UHA) which generally made it illegal to manufacture, import, or sell an "unsafe handgun." (SB 15 (Polanco) Chapter 248, Statutes of 1999.) A not unsafe handgun was defined, in part, as a pistol that can be fired in a reliable manner, can be dropped from a height without misfiring, and had a manual safety, as specified. Furthermore, commencing January 1, 2001, the DOJ was required to make a roster of all handguns that were determined to meet the requirements (or in other words, were "not unsafe") and that could be sold in the state.

   Beginning in 2003, a handgun had to be equipped with a chamber load indicator, which is a device that signals a bullet is in the chamber of the gun, and a magazine disconnect mechanism, which is a device that prevents a gun from firing without a magazine being inserted. (SB 489 (Scott) Chapter 500, Statutes of 2003.) Among other things, the legislation essentially grandfathered in handguns that were previously on the DOJ's handgun roster even if they did not contain the new required safety features.

   Most relevant to this bill, in 2007, a microstamping requirement was added. (AB 1471 (Feuer) Chapter 572, Statutes of 2007.) Microstamping is a device that places a miniature stamp on a bullet when it is fired so that authorities can, upon finding the bullet, more easily determine what gun it was fired from. (The Trace. *What is Microstamping, and Can It Help Solve Shootings*. (hereafter *The Trace: Microstamping*.) (Jan. 23, 2023.) <https://www.thetrace.org/2023/01/microstamping-gun-bullets-new-york/> [as of Jun. 14, 2023].)

   According to the background material provided by the author, firearm manufacturers essentially refused to introduce handguns equipped with such technology in what was effectively a boycott. This bill would allow firearms to be manufactured and sold to retailers without microstamping technology; but commencing in July 1, 2027, would prohibit firearm dealers from selling them without this technology. This bill would also require the DOJ to eventually set up a process by which the firearm dealers could then have their guns equipped with microstamping technology. Implementation of this bill will depend on the DOJ setting up a competent microstamping process in three years. Whether that is feasible or not likely hinges on the amount of funding provided to the DOJ.

3) **Second Amendment Jurisprudence**: California's microstamping requirement, and the UHA more broadly, have been the focus of several legal challenges. In 2018, a challenge to several provisions of the UHA, including the microstamping requirement, failed when the Ninth Circuit Court of Appeals ruled, under the relevant legal test at the time, that the requirement was reasonably tailored to address the substantial problem of untraceable bullets at crime scenes and the value of a reasonable means of identification. (*Pena v. Lindley* (2018) 898 F.3d 969, 982-986.)

However, a recent United States Supreme Court decision, *New York State Rifle and Pistol Association v. Bruen* (2022) 142 S.Ct. 2111, established a new test for determining whether a law comports with the Second Amendment's right to bear arms. Under that test, for a law regulating the possession of firearms to be constitutional, the government must show more than that the regulation promotes an important governmental interest – rather, the law must be "consistent with this Nation's historical tradition of firearm regulation." (*Id.* at 2126.)

Under this new test, two federal judges in California have independently struck down key provisions of the UHA, including the microstamping requirement. In the first decision, issued on March 20, 2023, the Central District of California blocked the chamber load indicator, magazine disconnect mechanism and microstamping provisions of the UHA from being enforced, concluding that, "no handgun available in the world has all three of these features," and that "the technology effectuating microstamping on a broad scale is simply not technologically feasible and commercially practical. (*Boland v. Bonta* (2023) U.S. Dist. LEXIS 51031 at 3.) Days later, the Southern District of California issued a similar ruling. In striking down the same three provisions of the UHA, the court held that "the State is unable to show that the UHA's [...] requirements are consistent with the Nation's historical arms regulations." (*Renna v. Bonta* (2023) U.S. Dist. LEXIS 63687 at 5-6.) Both cases are currently being appealed by the Attorney General. (Attorney General R. Bonta. *Attorney General Bonta Files Appeal in Defense of California's Unsafe Handgun Act.* (Mar. 27, 2023) <https://oag.ca.gov/news/press-releases/attorney-general-bonta-files-appeal-defense-california%E2%80%99s-unsafe-handgun-act> [as of Jun. 22, 2023].) Notably, although the DOJ is filing an emergency motion to stay the portions of the order relating to the chamber load indicator and the magazine disconnect, it is not seeking to immediately stop the court's decision enjoining the microstamping requirement. (*Ibid.*)

This bill would address the fact that no guns are currently being equipped with microstamping technology by requiring the DOJ to set up a process in about three years.

4) **Microstamping Technology**: Law enforcement uses ballistics technology, which among other things, relies on the distinct marking a gun makes on the projectile as well as the cartridge when fired. (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). *Automated Firearms Ballistics Technology.* <https://www.atf.gov/firearms/automated-firearms-ballistics-technology> [as of Jun. 22, 2023].) For example, law enforcement may recover cartridges found at the scene of a crime, and if they later find the gun that fired those cartridges, they could examine the unique and distinct markings that the gun makes on a cartridge to see if they match the distinct markings of the recovered cartridge. However, law enforcement would not know what gun a spent cartridge was associated with if they only had the cartridge.

Microstamping refers to the process by which a laser is used to engrave alphanumeric and geometric codes on handgun's firing pin, the piece of metal that strikes the cartridge of a bullet and causes it to fire. (*The Trace: Microstamping, supra.*) Each code would be assigned to the corresponding serial number of a firearm. When someone pulls the trigger of the weapon, the firing pin strikes the bullet and "stamps" the code onto the cartridge. Thus, a microstamped cartridge at a crime scene would allow law enforcement to look at the microstamped code, and immediately associate it with the serial number of the gun that fired it. This theoretically would provide law enforcement with an immediate lead, as they could

look up the serial number of the gun, and interview the person who is listed as the owner of the gun with that particular serial number.

There is a fierce debate regarding the viability of microstamping, with gun control advocates stating that it is reliable, and gun rights advocates saying it is absolutely not. The overall evidence seems to be in-between. The largest part of the debate is on the legibility of the codes on the casings. (*The Trace: Microstamping, supra.*) An initial study from 2004 by forensic scientist Lucien Haag concluded that the codes were legible on nearly every cartridge after firing some firearms approximately 1,200 times. However, the study was not peer-reviewed, and Haag did not publish it in a journal, stating that his observations were not definitive. (*Ibid.*) Two years later, a peer-reviewed study was published by George Krivosta, and he found that after 100 shots, only 54 of the codes were fully legible. (*Ibid.*) Two subsequent peer-reviewed and published studies demonstrated the technology was more reliable than what Krivosta's study indicated, but still varied. (*Ibid.*) The legibility of the codes varied depending on the firearm, with one gun being more than 90% legible over 3,000 rounds, and another gun only being approximately 70% legible. (*Ibid.*) The technology's creator acknowledged that some microstamped codes will be illegible due to the unpredictable nature of the inner workings of firearms. (*Ibid.*) The creator did add though, that even if close to half of the codes are partially illegible, it would still provide more information than law enforcement currently has. (*Ibid.*)

In addition to reliability challenges, in order to fully utilize microstamping, crime labs would likely need to be equipped with higher powered microscopes, called Scanning Electron Microscopes (SEMs), which provide the clearest image of the microstamp, but cost upwards of $70,000. (*The Trace: Microstamping.*) It is unclear how many labs in California are equipped with such microscopes.

5) **Argument in Support**: According to the *Brady Campaign*, "Peer-reviewed studies have found that microstamp-equipped firearms accurately marked thousands of rounds fired across a variety of different firearm models and those microstamped codes were legible on over 90% of cartridge cases tested. Importantly, microstamping technology is unencumbered by patent restrictions and will give law enforcement officers access to critical intelligence to identify those perpetuating gun violence in California, allowing them to rely on evidence rather than bias in arrests and prosecutions.

"The value of microstamping technology in the fight to end gun violence cannot be overstated. This technology will substantially enhance law enforcement's crime solving capabilities by allowing officers to match cartridges found at crime scenes directly to the gun that fired them, thus helping to identify individuals carrying out violent, criminal acts. As the International Association of Chiefs of Police has noted in its support of microstamping: "this technology would be used to help law enforcement identify the first known purchaser of a weapon used in crime, therefore providing leads that would allow for substantial evidentiary information that will help identify, apprehend and arrest criminals."

"The value of this technology for law enforcement cannot be overstated. Gun-related incidents are driving the increase in violent crime within the state and across the country. Between 2019-2020, California experienced a 52% increase in firearm homicides and a 64% increase in gun-related aggravated assaults. A large majority of such shootings go unsolved, encouraging cycles of retaliatory violence and distrust in law enforcement. In 2021, the

percentage of statewide gun crimes solved by law enforcement was only 40%, including only 55% for homicides. SB 452 will help state and local law enforcement solve crimes, break cycles of gun trafficking, and increase trust in law enforcement.

"In fact, communities of color across the country face disproportionate rates of gun violence crime, many of which are never solved. A yearlong investigation based on data obtained from 22 cities showed that law enforcement's clearance rate for crimes when they involve a victim of color was only 21% for firearm assaults versus 37% for white victims. This perpetual gun violence results not only in high levels of violent crime, but also mental and physical distress, stalled economic and business development, fewer job opportunities, decreased home value, and overburdened public health resources in disproportionately impacted communities.

"Microstamping technology will facilitate law enforcement's efforts to solve more crimes, thereby ending the cycle of violence afflicting many black and brown communities. The technology will also increase community trust in law enforcement by relying on a tool that does not infringe on privacy rights–like some video and audio surveillance systems–and allows law enforcement to rely on objective data for evidence, as opposed to more biased alternatives. The swift integration of this technology could not be more critical right now…"

6) **Argument in Opposition**: According to the *National Shooting Sports Foundation*, "Over ten years have passed since the passage of Assembly Bill No. 1471, and to this day it is still impossible to comply with either the single or the dual microstamping mandate. Conceding the impractical and impossible nature of the dual microstamping mandate, AB 2847 eliminated the dual location requirement entirely and instead reverts back to the original version of Assembly Bill No. 1471 (prior to being amended on April 10, 2007) by requiring single placement microstamping.

"It's informative to revisit the California legislature's reasoning for passing a dual placement microstamping madidate opposed to a single placement over ten years ago. Why didn't the legislature just pass a single placement requirement in the first place? The answer is the California Legislature realized single placement microstamping was unreliable, easily defeated by criminals, cost prohibitive and would not fulfill California's requirements.

"Contrary to what the proponents are arguing, a National Academy of Science review, forensic firearms examiners report, and even a University of California at Davis study reached the conclusion that there is no microstamping technology available that will reliably, consistently and legibly imprint the identifying information by a semiautomatic handgun on the ammunition it fires. Furthermore, the UC Davis study concluded the patented technology was 'flawed' and 'At the current time it is not recommended that a mandate for implementation of this technology in all semiautomatic handguns in the state of California be made. Further testing, analysis and evaluation is required.' The holder of the patent for this technology himself has asserted in written testimony and public statements that there are problems with the technology and that further study is warranted before it is mandated. Additionally, the consensus of technical experts in the firearms industry agree that the technology wasn't viable then and isn't viable today.

"…All someone would have to do to render microstamping ineffective is to locate their firing pin (which is easy and common practice in cleaning a firearm) and either replace the firing

pin or file the tip to remove the identifying properties.

"…SEMs are not commonplace in crime labs throughout the United States and they are cost prohibitive costing more than $200,000 per unit compared to a stereo-zoom microscope which costs less than $5,000.

"If a state crime lab has a SEM, it is used to conduct gunshot residue (GSR) analysis and other trace evidence analysis. Labs would never allow these SEMs to be used for examining the primers of cartridges cases for microlasered markings on the primer due to concerns that a very minute trace amount of gun powder from the casing would contaminate the SEM's chamber and preclude future SEM-GSR analysis. It is also highly unlikely that a laboratory would have the funding to purchase an additional SEM strictly for the analysis of micro-marked firing pin impressions.

"…In their study, UC Davis paid ~$250 per firing pin without the patent royalty. In a clarifying letter they asserted some vendors initially promised ~$20 per firing pin without the patent royalty, but the process ended up being much more costly. Lizotte the patent holder testified in front of the Connecticut legislature that he plans to profit from his intellectual property which would further increase the price of microstamping and thus increase the overall price of firearms significantly. Lizotte stated he will only provide a "royalty free license" for the technology. Meaning anyone who tries to use the technology without a license from Lizotte will be infringing on the patent. Another important thing to note is the technology is NOT available to more than one manufacturer "unencumbered by any patent restrictions." It's likely AB 2847(2) was estimating the cost of the patent payment per firing pin and not the overall cost which UC Davis paid approximately ~$250 per firing pin.

"California asks for the make, model and serial number to be on the firing pin of the firearm which presents major hurdles. The patent holders conceded that markings would be an 8-digit alpha-numeric code. Even if you could get all the information required with 8 digits, many microstamping tests failed to reliably show all alpha-numeric digits legibly. Furthermore, with limited digits, major problems arise as to who will keep a database and assign the letters /numbers.

"The National Shooting Sports Foundation maintains CCR § 4070 Roster of Certified Handguns is unnecessary and an infringement on the Second Amendment. In 2013, then Attorney General Harris banned new pistol models in California. California's unprecedented ban prevents consumers from taking advantage of improvements in pistol safety. Since 2013, new handgun models have introduced better ergonomics, reduced recoil (especially important for people who do not have great upper body strength), durability, and accuracy. Better ergonomics, better sights, easier control, and multitude of other improvements to make guns safer to use…"

7) **Prior Legislation**:

   a) AB 876 (Chiu) of the 2021-2022 Legislative Session, would have required handguns purchased or acquired by any state, county, city, or city and county law enforcement agency to be equipped with microstamping technology within 90 days of acquisition. AB 876 was held in the Assembly Appropriations Committee.

b) AB 2847 (Chiu) Chapter 292, Statutes of 2020, required handguns to be equipped with microstamping technology that produced only one stamp and required the DOJ to take three handguns off the unsafe handgun roster for every new handgun added on.

c) AB 1471 (Feuer) Chapter 572, Statutes of 2007, required, commencing January 1, 2010, all semiautomatic pistols not previously designated as not unsafe handguns, as specified, to be equipped with microstamping technology that etched stamps into two or more locations on the cartridge of a bullet, but delayed implementation until the Attorney General certified microstamping technology was unencumbered by any patent restrictions.

d) AB 352 (Koretz) of the 2005-2006 Legislative Session, would have required all semiautomatic pistols to be equipped with microstamping technology. AB 352 failed passage on the Assembly floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign
Brady Campaign California
Everytown for Gun Safety Action Fund
Prosecutors Alliance California
Women for American Values and Ethics Action Fund

1 Private Individual

Opposition

California Rifle and Pistol Association, INC.
California State Sheriffs' Association
Gun Owners of California, INC.
National Shooting Sports Foundation, INC.

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

Date of Hearing: June 27, 2023
Counsel: Andrew Ironside

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

SB 464 (Wahab) – As Amended March 22, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires specified agencies and facilities to conduct an audit of all untested sexual assault kits in their possession and to submit the results of those audits to the Department of Justice (DOJ). Specifically, **this bill**:

1) Requires each law enforcement agency (LEA), medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits to conduct an audit of all untested sexual assault kits in their possession.

2) Requires entities to submit the audit to the DOJ no later than July 1, 2026.

3) Requires the audit to include the following information:

   a) The total number of untested sexual assault kits in their possession;

   b) For each kit, the following information:

      i) Whether or not the assault was reported to a law enforcement agency; and

      ii) Unless the victim has chosen not to pursue prosecution, the date the kit was collected, the date the kit was picked up by a law enforcement agency, the date the kit was delivered to a crime laboratory, and the reason the kit has not been tested, if applicable.

   c) The number of kits where the victim has chosen not to pursue prosecution at the time of the audit.

4) Requires DOJ, by no later than July 1, 2027, to prepare and submit a report to the Legislature summarizing the information received from the audits.

5) Changes the time period within which the prosecuting attorney is required to inform the victim or witness, if they have requested to be informed, of the disposition of a case at the trial court level from 60 days to 30 days.

EXISTING LAW:

1) Requires the prosecuting attorney, upon the request of a victim or a witness of a crime, to inform the victim or witness by letter of the final disposition of a case within 60 days. (Pen.

Code, § 11116.10, subd. (a).)

2) Defines "final disposition" as an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case. (Pen. Code, § 11116.10, subd. (d).)

3) Creates the Sexual Assault Victims' DNA Bill of Rights, which regulates the timing of the testing of samples taken from a sexual assault victim including duties of crime labs and how the samples shall be upload to the Combined DNA Index System (CODIS). (Pen. Code, § 680.)

4) Requires a LEA in whose jurisdiction a specified sex offense occurred to do one of the following for any sexual assault forensic evidence received by the LEA on or after January 1, 2016:

   a) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; or

   b) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim (Pen. Code, § 680, subd. (c)(1).)

5) Provides that the crime lab shall do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:

   a) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence; or,

   b) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA. (Pen. Code, § 680, subd. (c)(2).)

6) Requires the LEA investigating the crime to inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case, upon the victim's request. The LEA may, at its discretion, require that the victim's request be in writing. The LEA shall respond to the victim's request with either an oral or written communication, or by email, if an email address is available. The LEA is not required to communicate with the victim or the victim's designee regarding the status of DNA testing absent a specific request from the victim or the victim's designee. (Pen. Code, § 680 subd. (d)(1).)

7) States that sexual assault victims have the right to access the DOJ's Sexual Assault Forensic Evidence Tracking (SAFE-T) database portal for information involving their own forensic

kit. (Pen. Code, § 680 subd. (d)(2).)

8) Provides that sexual assault victims have the following rights:

   a) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case;

   b) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the DOJ Data Bank of case evidence; and,

   c) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code, § 680, subd. (d)(3).)

9) Requires that, if an LEA does not analyze DNA evidence within six months prior to the established time limits, a victim of a sexual assault offense be informed, either orally or in writing, of that fact by the LEA. (Pen. Code, § 680, subd. (e).)

10) Provides that if an LEA intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case, the victim shall be given written notification by the LEA of that intention. (Pen. Code, § 680, subd. (f)(1).)

11) Prohibits an LEA from destroying or disposing of rape kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday. (Pen. Code, § 680, subd. (f)(2).)

12) Specifies that written notification to the victim about the destruction of the evidence in an unsolved sexual assault case shall be made at least 60 days prior to its destruction or disposal. (Pen. Code, § 680, subd. (g).)

13) Provides that a sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the above information. (Pen. Code, § 680, subd. (h).)

14) Requires that the (DOJ, on or before July 1, 2022, and in consultation with LEAs and crime victims groups, establish a process that allows a survivor of sexual assault to track and receive updates privately, securely, and electronically regarding the status, location, and information regarding their sexual assault evidence kit in the department's SAFE-T database. (Pen. Code, § 680.1.)

15) Provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

a) Forensic casework and forensic unknowns;

b) Known and evidentiary specimens and samples from crime scenes or criminal investigations;

c) Missing or unidentified persons;

d) Persons required to provide specimens, samples, and print impressions;

e) Legally obtained samples; and,

f) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 295.1, subd. (c)(1)-(6).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 464 requires law enforcement agencies to report to the California Department of Justice the number of sexual assault evidence kits they collect, and the number of untested kits in their possession. This bill also provides survivors of sexual assault with the necessary legal protections and ensures case disposition is shared in a timely manner.

   "SB 464 is a critical step towards ensuring that every sexual assault evidence kit is tested, that survivors are informed about the status of their kit, and that perpetrators of sexual assault are brought to justice. By allowing Californians to understand the status of all sexual assault evidence kits in the state, SB 464 will help to identify any systemic issues that may prevent timely testing of these kits, and provide transparency and accountability for survivors, law enforcement, and the public."

2) **Sexual Assault Evidence Kits Overview**: After a possible sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a "sexual assault evidence kit" (SAE kit). SAE kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers.

   Prior to 2019, the composition of SAE kits varied throughout California. (Audit of Untested Sexual Assault Forensic Evidence Kits: 2020 Report (ca.gov) at p. 4 [as of June 20, 2023]) Although they were similar, the exact SAE kit used by a medical facility was determined by the crime laboratory serving that jurisdiction. (*Ibid.*) AB 1744 (Cooper), chapter 857, Statutes of 2016, required the DOJ's Bureau of Forensic Services, the California Association of Crime Laboratory Directors and the California Association of Criminalists to collaborate with public crime laboratories and the California Clinical Forensic Medical Training Center to develop a standardized SAE kit to be used by all California jurisdictions. (*Ibid.*) The basic components were to be established by January 30, 2018, and guidelines pertaining to the use of the kit components were to be issued on or before May 30, 2019. (*Ibid.*) The new

standardized kit was finalized and ready for production in September 2019. (*Ibid.*)

Analyzing forensic evidence from SAE kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a SEA kit examination, it transfers the kit to a local law enforcement agency. From there, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI website, Combined DNA Index System (CODIS), available at: https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/codis#Combined-DNA%20Index%20System%20CODIS ,[as of June 20, 2023].) At present, more than 190 public law enforcement laboratories use CODIS. (*Ibid.*)

3) **Untested Sexual Assault Evidence Kits**: There are a number of reasons why law enforcement authorities may not submit a SAE kit to a crime lab. For example, the identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety for reasons, or a guilty plea may be entered rendering further investigation moot. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Case*s, May 2011, at page 3, available at: https://www.ncjrs.gov/pdffiles1/nij/233279.pdf, [as of March 20, 2023].)

A 2020 report by the California Attorney General Division of Law Enforcement Bureau of Forensic Service found that the backlog for analyzing sexual assault evidence kits continues:

> Until 2015, California did not have a system in place for collecting comprehensive data on the number of SAE kits collected from survivors/victims of sexual assault and the status of untested kits. SAE kit records were only maintained at the agency level and were not centrally tracked or reported. In an effort to collect and centralize data regarding the status and disposition of SAE kits in the possession of LEAs and crime laboratories, the Department created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database in 2015. Access to SAFE-T is strictly limited to designated users from LEAs, public crime laboratories, and district attorneys' offices. Although strongly encouraged, LEAs and crime laboratories were not legally mandated to use SAFE-T to track their SAE kits until 2017 when AB 41 (Stats. 2017, ch. 694) went into effect. This bill required that all survivor/victim SAE kits collected as of January 1, 2018, be reported in the SAFE-T database. However, because the mandate does not extend retroactively to include kits that were collected from a survivor/victim prior to January 1, 2018, SAFE-T does not provide a comprehensive view of the current size and distribution of, or reasons for, California's SAE kit backlog.
>
> This report is a first step in a larger effort to work with other agencies that handle SAE kits to fill the information gaps. Addressing the backlog issue requires knowing the

number of untested kits across the state and understanding the reasons they remain untested.

...

A wide range of reasons exist for SAE kits to remain untested. The reasons included: A victim not pursuing prosecution; A case could not be investigated or prosecuted; Testing was not necessary/case adjudicated; Unknown/other Active investigation/prosecution; An analysis was unlikely to yield DNA profile; The kit belongs to another jurisdiction; No crime/crime other than rape. (Audit of Untested Sexual Assault Forensic Evidence Kits: 2020 Report (ca.gov) at pp. 5 & 9 [as of March 21, 2023])

It is important to note that just because a kit goes untested does not necessarily mean that the suspect's DNA profile was never uploaded to CODIS in order to potentially link the suspect to other crimes. If a suspect is convicted of, or even arrested for, certain qualifying offenses, a DNA sample is collected pursuant to and the DNA profile uploaded to the Arrestee Index or the Convicted Offender Index in CODIS. (Pen. Code, § 296.) A conviction for any felony will require the collection of a DNA profile for both adults and juveniles. And an arrest or charge against an adult for any felony or any offense that would result in requiring the person to register as a sex offender, if convicted, would similarly result in the collection of a DNA profile. (*Ibid.*). Such profiles are then regularly searched against the already-existing profiles in CODIS.

This bill would require LEAs, medical facilities, crime laboratories, and other facilities that handle sexual assault evidence kits to conduct audits of all untested sexual assault kits and report to DOJ the results of those audits.

4) **Practical Consideration:** This bill also changes the time period within which the prosecuting attorney is required to inform the victim or witness, if they have requested to be informed, of the final disposition of a case at the trial court level from 60 days to 30 days. Under existing law, "final disposition" is defined as "an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case." (Pen. Code, § 11116.10, subd. (d).) The definition does not include appeals. Currently, a defendant must file a notice of appeal within 60 days of the judgment. (Cal. Rules of Court, rule 8.308(a).) By changing the deadline to 30 days, a prosecuting attorney's office may have to report the "final disposition" to a victim or witness well before a defendant decides whether to appeal the judgment.

5) **Argument in Support**: According to *RISE*, "Many survivors of sexual assault lack the legal expertise necessary to effectively advocate for themselves and to ensure that evidence related to their case is properly collected. Further, when cases drag on for long periods of time, survivors may be retraumatized by the legal process.

"Moreover, in 2021, the Department of Justice released an audit of untested rape kits. Of the 693 law enforcement agencies in the state, only 149 reported data for the audit. This lack of participation raises concerns about law enforcement transparency and their ability to properly protect evidence."

6) **Related Legislation**:

a) AB 1368 (Lackey), would have required law enforcement agencies to submit, and the crime lab to process, sexual assault kits within specified time frames. AB 1368 was held in the Assembly Appropriations Committee in the Suspense File.

b) SB 376 (S. Rubio) would grant victims of human trafficking the right to have a human trafficking advocate and support person at an interview by law enforcement authorities, district attorneys, or the suspect's defense attorney, and be advised of such right. SB 376 is currently pending in the Assembly Appropriations Committee.

7) **Prior Legislation**:

a) AB 18 (Lackey), of the 2021-2022 Legislative Session, was nearly identical to AB 1368. AB 18 was held in the Assembly Committee on Appropriations Suspense File.

b) SB 916 (Leyva), Chapter 916, Statutes of 2022, entitles a sexual assault victim to access the DOJ SAFE-T database portal for information involving their own forensic evidence kit and the status of the kit.

c) AB 2481 (Lackey), of the 2019-2020 Legislative Session, was nearly identical to AB 1368. AB 2481 was held in the Assembly Committee on Appropriations Suspense File.

d) SB 215 (Leyva), Chapter 634, Statutes of 2021, required the DOJ to establish, on or before July 1, 2022, a process that allows a survivor of sexual assault to privately, securely and electronically track and receive updates regarding the status, location and information of their sexual assault evidence kit in the DOJ SAFE-T database.

e) AB 358 (Low), of the 2019-2020 Legislative Session, would have required DOJ, no later than July 1, 2023, to create a statewide tracking system that allows a sexual assault victim to monitor the testing and processing of the sexual assault forensic evidence collected in their case. AB 358 was held on the Assembly Committee on Appropriations Suspense File.

f) AB 1496 (Frazier), of the 2019-2020 Legislative Session, would have required a law enforcement agency to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing within existing specified time frames. AB 1496 was held on the Assembly Committee on Appropriations Suspense File.

g) AB 3059 (Kalra), of the 2019-2020 Legislative Session, was substantially similar to SB 376. AB 3059 was held in the Assembly Public Safety Committee.

h) SB 22 (Levya), Chapter 588, Statutes of 2019, requires law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure a rapid turnaround DNA program is in place. This law also requires crime labs to either process evidence for DNA profiles and upload them into the CODIS or transmit the evidence to another crime

lab for processing and uploading.

i) AB 41, Chapter 694, Statutes of 2017, requires local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody.

j) AB 280 (Low), Chapter 698, Statutes of 2017, established the Rape Kit Back Log Voluntary Tax Contribution Fund and allowed taxpayers to contribute their own funds to the Fund through a designation on the state personal income tax return.

k) AB 1744 (Chiu), Chapter 857, Statutes of 2016, requires the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit, containing minimum basic components, to be used by all California jurisdictions.

REGISTERED SUPPORT / OPPOSITION:

Support

California National Organization for Women
Joyful Heart Foundation
Rise, INC.

1 Private individual

Opposition

None submitted.

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

Amended Mock-up for 2023-2024 SB-464 (Wahab (S))

Mock-up based on Version Number 98 - Amended Senate 3/22/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

~~**SECTION 1.** Section 679.04 of the Penal Code is amended to read:~~

~~**679.04.** (a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates, a support person of the victim's choosing, and a licensed attorney representing the victim present at any interview by law enforcement authorities, district attorneys, or defense attorneys. A victim retains this right regardless of whether they have waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.~~

~~(b) (1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified in writing by the attending law enforcement authority or district attorney that they have the right to have victim advocates, a support person of the victim's choosing, and a licensed attorney representing the victim present at the interview or contact, about any other rights of the victim pursuant to law in the card described in subdivision (a) of Section 680.2, and that the victim has the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.~~

~~(2) At the time the victim is advised of their rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates, a support person, and a licensed attorney representing the victim present at any interview by the defense attorney or investigators or agents employed by the defense attorney.~~

~~(3) The presence of a victim advocate shall not defeat any existing right otherwise guaranteed by law. A victim's waiver of the right to a victim advocate is inadmissible in court, unless a court determines the waiver is at issue in the pending litigation.~~

~~(4) The victim has the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. It is the intent of the Legislature to encourage every interviewer in this context to have trauma-based training.~~

~~(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.~~

~~(d) A law enforcement official shall not, for any reason, discourage a victim of an alleged sexual assault from receiving a medical evidentiary or physical examination.~~

~~**SEC. 2.**~~ **SECTION 1.** Section 680.4 of the Penal Code is repealed.

SEC. 32. Section 680.4 is added to the Penal Code, to read:

680.4. (a) Each law enforcement agency, medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits shall conduct an audit of all untested sexual assault kits in their possession and shall, no later than July 1, 2026, submit a report to the Department of Justice containing the following information:

(1) The total number of untested sexual assault kits in their possession.

(2) For each kit, the following information:

(A) Whether or not the assault was reported to a law enforcement agency.

(B) For kits other than those described in subparagraph (C), the following data, as applicable:

(i) The date the kit was collected.

(ii) The date the kit was picked up by a law enforcement agency, for each law enforcement agency that has taken custody of the kit.

(iii) The date the kit was delivered to a crime laboratory.

(iv) The reason the kit has not been tested, if applicable.

(C) For kits where the victim has chosen not to pursue prosecution at the time of the audit, only the number of kits.

(b) The Department of Justice shall, by no later than July 1, 2027, prepare and submit a report to the Legislature summarizing the information received pursuant to subdivision (a).

(c) The report required by subdivision (b) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 4-3. Section 11116.10 of the Penal Code is amended to read:

11116.10. (a) Upon the request of a victim or a witness of a crime, the prosecuting attorney shall, within ~~72 hours~~ **30 days** of the final disposition of the case, inform the victim or witness by letter of such final disposition. Such notice shall state the information described in Section 13151.1.

(b) As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, "witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

(d) As used in this section, "final disposition," means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case.

(e) Subdivision (a) does not apply in any case where the offender or alleged offender is a minor unless the minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(f) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: June 27, 2023
Counsel: Liah Burnley

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

SB 474 (Becker) – As Amended May 18, 2023

SUMMARY: Requires the price of articles sold in canteens at the Department of Corrections and Rehabilitation (CDCR) not to exceed 10% above the amount paid to vendors. Specifically, **this bill**:

1) Requires CDCR to maintain a canteen at active prisons or institutions under its jurisdiction.

2) Requires CDCR to provide necessary facilities, equipment, personnel and merchandise for the canteen.

3) Requires CDCR to undertake to insure against damage or loss of canteen and handicraft materials, supplies and equipment owned by the Inmate Welfare Fund (IWF).

4) Requires the price of articles sold in the canteen not to exceed 10% above the amount paid to the vendors.

EXISTING LAW:

1) Permits CDCR to maintain a canteen at any prison or institution under its jurisdiction to sell incarcerated person toilet articles, candy, notions, and other sundries. (Pen. Code, § 5005.)

2) Permits CDCR to provide the necessary facilities, equipment, personnel, and merchandise for the canteen. (Pen. Code, § 5005.)

3) Permits CDCR to undertake to insure against damage or loss of canteen and handicraft materials, supplies and equipment owned by the IWF. (Pen. Code, § 5005.)

4) Provides that the sale prices of the articles offered for sale in the canteen shall be fixed by CDCR at the amounts that will, as far as possible, render each canteen self-supporting. (Pen. Code, § 5005.)

5) Requires all net proceeds from the operation of canteens to be deposited in the IWF. The moneys in the fund shall constitute a trust held by the Secretary of CDCR for the benefit and welfare, of all of persons incarcerated at CDCR instructions. (Pen. Code, § 5006, subd. (b).)

6) Requires the Department of Finance (DOF) to conduct a biennial audit of canteen operations at any prison or institution and requires the audit to be available to incarcerated persons, as specified. (Pen. Code, § 5005.)

7) Establishes the IWF and provides that all moneys held for the benefit of persons incarcerated at CDCR facilities shall be deposited therein. The money in the fund shall be used solely for the benefit and welfare of persons incarcerated at CDCR institutions, including, among other things, for the establishment, maintenance, employment of personnel for, and purchase of items for sale to incarcerated persons at canteens maintained at the state institutions. (Pen. Code, § 5006, subd. (a)(1).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Incarcerated people and their families incur expenses and additional cost pressures that other people do not. This added financial burden disproportionately falls on low income, families of color. In addition to rising costs related to inflation, families of incarcerated people also have to bear the cost of canteen markups to provide basic necessities for their loved ones, including but not limited to food, hygiene items, and health supplements.

   "Canteen items are marked up an average of 65%, but can exceed 200% of what the average consumer would pay at their local store. Given wages for most incarcerated people range between eight and thirty-seven cents an hour, canteen purchases already take an exorbitant amount of their income. Markups can push these items out of reach entirely. According to Impact Justice, in 2020, 60% of incarcerated people surveyed said they could not afford canteen purchases and 75% reported that they experienced limited access to food due to their or their family's finances. Additionally, The Ella Baker Center reports nearly 2 in 3 families with an incarcerated family member were unable to meet their family's basic needs – including food and housing needs – due to the financial burdens of incarceration.

   "Canteen markups economically drain over $30 million each year from impacted families, and lead to families having to make tough decisions over whether to provide food for their incarcerated loved one or cover their own basic needs.

   "The BASIC(s) Act aims to alleviate the unnecessary cost pressures associated with incarceration by limiting markups on prison canteen goods to no more than 10% of the price paid to the vendor so all incarcerated persons can access food, hygiene, and health items. Everyone deserves access to basic necessities, including our incarcerated Californians."

2) **Prison Canteens**: Existing law permits, but does not require, CDCR to maintain a canteen at any prison or institution under its jurisdiction for the sale of toilet articles, candy, notions, and other sundries to incarcerated people. (Pen. Code, § 5005.) CDCR is statutorily authorized, but not required, to provide the necessary facilities, equipment, personnel, and merchandise for the canteen. (*Ibid.*) Title 15 regulations do require each CDCR facility to establish a canteen enabling incarcerated prisons to make purchases of approved merchandise. (Cal. Code Regs., tit. 15 §§ 3090 – 3095.) Despite the permissive statutory language, canteens are currently operated in all correctional institutions. (DOF, Office of State Audits and Evaluations, *Report No. 22-5225-029* (Jan. 2023) at p. 9 <https://esd.dof.ca.gov/reports/reportPdf/98602576-41DE-ED11-A820-00224843A957/Department%20of%20Corrections%20and%20Rehabilitation%20Financial%20Combined%20Inmate%2

0Welfare%20Fund%20for%20the%20Fiscal%20Year%20Ended%20June%2030,%202021> [June 8, 2023].)

Under current law, the sale prices of the articles offered for sale in the canteen is fixed by the Secretary of CDCR at the amounts that will, as far as possible, "render each canteen self-supporting." (Pen. Code, § 5005.) Pursuant to regulations, facility staff are required to "consult with representatives of the inmate population when determining items to be stocked in the canteen for resale." (Cal. Code Regs., tit. § 3090, subd. (a).) However, the Penal Code vests CDCR with broad discretion to set the price of items sold in the canteen. (See *In re Hamilton* (1996) 41 Cal.App.4th 926, 934-935.) In *In re Hamilton,* the court of appeal held that the imposition by CDCR of a 10% surcharge on items bought or sold by incarcerated persons is within CDCR's discretion, including purchases at the prison canteen. (*In re Hamilton, supra,* 41 Cal.App.4th at pp. 934-935.) The court observed, "The Legislature has vested [CDCR] with considerable discretionary power by which to attain the goal of a self-supporting program. The subject surcharge clearly falls within the ambit of this power." (*Id.* at p. 933.) The court concluded that the surcharge was necessary to "defray costs." (*Id.* at pp. 934-935.) The court elaborated that, Penal Code section 5005 requires only that the canteens "as far as possible" "attempt" to be self-supporting. Thus, prison canteens may price items to generate net proceeds, so long as those proceeds are used in the manner required by law. (*Ibid.*)

The DOF is required to conduct biennial audits of canteen operations. (Pen. Code, § 5005.) In its most recent audit for Fiscal Year 2021, the DOF reports that the net canteen sales across all CDCR institutions was $89,465,128. The cost of the goods sold totaled $54,938,660. The gross margin from canteen sales totaled $34,526,468 and canteen expenses totaled $25,180,743. As such, the total income from canteen sales across all CDCR institutions was $9,345,725. (DOF, Office of State Audits and Evaluations, *Report No. 22-5225-029*, *supra* at p.33.)

$9.3 million in proceeds is likely more than adequate to render the canteens "self-supporting" and "defray costs." Of note, the income from canteen sales is raised directly from incarcerated persons. The combined pay for all incarcerated persons across all of CDCR's institutions for the fiscal year relating to canteen operations was $67,705—a mere fraction of a percent of the total income from canteen sales. (DOF, Office of State Audits and Evaluations, *Report No. 22-5225-029*, *supra* at p.33.) Though canteen prices continue to rise, the State has not raised pay for incarcerated persons[1], including the pay of those that work the canteens.

Advocates argue that canteen items have unreasonably high prices compared to the prices of the same or similar items available to the general public. A 2020 report published by Initiate Justice found that 60% of the formerly incarcerated individuals surveyed by the organization could not afford canteen purchases while incarcerated and in some prisons, prices are inflated

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[1] Generally, the average pay for incarcerated people is $0.08 to $0.37 an hour before fees and deductions (Cal. Code Regs., tit. 15, § 3041.2.) Recent measures to increase prison pay have failed passage by the Legislature. (See, e.g., SB 1371 (Bradford), of the 2021-2022 Legislative Session [would have required CDCR to adopt a 5-year implementation plan to increase inmate wages; SB 1371 was vetoed]; ACA 3 (Kamlager), of the 2021-2022 Legislative Session [would have removed language in the state Constitution that allows involuntary servitude as punishment to a crime; ACA 3 was ordered to the Senate Inactive File].)

compared to identical products in grocery stores. (Leslie Soble, Kathryn Stroud, and Marika Weinstein, *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison* (2020) at p. 11, 62-64 < https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars.pdf> [June 8, 2023].)

The size of the prison commissary industry is difficult to estimate, but likely exceeds $1.6 billion in annual revenue. (Stephen Raher, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 Hastings Race & Poverty L.J. 3 (2020).) "It is difficult to see prison-retail prices as anything other than premium rates charged for inexpensive, run-of-the mill goods or services." (*Id.,* at p. 25.) Commentators have opined that the prison-retail industry is an exploitative "business model based on using the coercive power of the state to extract revenue from poor people in the form of exorbitant prices for phone calls or junk food." (*Ibid.*)

According to background information provided by the author, "In the past five years, the average markup on canteen items was 65% above the price paid to the vendor … . [C]anteen prices have skyrocketed, worsening the undue financial burden on incarcerated people. With state prison minimum wage set at $0.08 cents an hour, a purchase of toothpaste (currently $6 at Chuckawalla State Prison […]) can take half of someone's monthly income." (Aljazeera, *Rising Prices Behind Bars Hammer Imprisoned People in the US* (Jan. 3, 2023) <https://www.aljazeera.com/news/2023/1/3/rising-prices-behind-bars-hammer-incarcerated-people-in-the-us> [June 8, 2023].)

This bill would delete provisions of existing law requiring the sale price of articles sold in the canteen to be fixed by CDCR and instead, would require the price of articles sold in the canteen not to exceed 10% above the amount paid to the vendors.

3) **Arguments in Support**:

a) According to the *Ella Baker Center for Human Rights* (EBC), "Eliminating mark-ups at CDCR will promote economic security for families impacted by incarceration, helping to reduce their reliance on government-assistance programs and redirect scarce financial resources towards family connection, long-term goals and reentry costs.

"Investing in financial stability for justice-involved families is also a critical and evidence-based strategy for improving reentry outcomes and preventing recidivism; it represents a smart investment in public safety for all Californians, as well as a smart financial investment that will save tax-payer dollars from being spent on unnecessary reincarceration. […]

"Lastly, the cost of operating canteens will undoubtedly decrease over time as California continues to reduce its prison population and close housing units and entire prisons, as outlined by Governor Newsom –inevitability leading to fewer prison canteens."

b) According to one *Private Individual*, "I am currently incarcerated at Ironwood State prison in California.

"Inmate wages have not been raised in over 40 years, but the prices on canteen keep rising […] I don't get paid for my job here at prison and its already hard on my family to

put money on my books. So raising these prices constantly doesn't do anything but prevent me from being able to buy food. I went from 200 pounds to 174 in the course of 3 months all because these prices on canteen keep rising and I'm not able to afford the food or hygiene."

4) **Related Legislation**:

a) SB 390 (Cortese), would, among other things, adds to the list of civil rights afforded to incarcerated persons the right to access, or purchase, religious clothing and headwear, not exceeding the purchase price and normal taxes of the item. SB 390 is being heard in this committee today.

b) SB 799 (Durazo), would require CDCR to allow family visitors to bring certain items for approved family visits. SB 799 is pending hearing in this committee.

5) **Prior Legislation**:

a) SB 1008 (Becker), Chapter 827, Statutes of 2022, requires CDCR to provide voice communication services to incarcerated persons free of charge.

b) AB 1782 (Jones-Sawyer), of the 2021-2022 Legislative Session, would have renamed the IWF the Incarcerated Peoples' Welfare fund and would have required money in the fund to be expended solely for the benefit, education, and welfare of incarcerated people. AB 1782 was vetoed.

c) SB 555 (Mitchell), of the 2019-2020 Legislative Session, would have required, in part, that IWF funds be expended solely for the benefit, education, and welfare of the individuals incarcerated in the jail. SB 555 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project
ACLU California Action
All of Us or None San Diego
Alliance San Diego
Anti Recidivism Coalition
Anti-recidivism Coalition
Asian Solidarity Collective
Black Panther Party - San Diego
Blameless and Forever Free Ministries
Brooke Jenkins, San Francisco District Attorney
Buen Vecino
Cair California
Cair San Diego
California Alliance for Youth and Community Justice
California Coalition for Women Prisoners

California Families Against Solitary Confinement
California Immigrant Policy Center
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Center on Juvenile and Criminal Justice
Change Begins With Me (INDIVISIBLE)
City and County of San Francisco
Communities United for Restorative Youth Justice (CURYJ)
Community Advocates for Just and Moral Governance
Del Cerro for Black Lives Matter
Democratic Club of Vista
Democratic Woman's Club of San Diego County
Disability Rights California
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Escondido Democratic Club
Families United to End Lwop
Families United to End Lwop - Fuel
Felony Murder Elimination Project
Fresno Barrios Unidos
Friends Committee on Legislation of California
Grip Training Institute
Hillcrest Indivisible
Indivisible 92116
Indivisible CA Statestrong
Initiate Justice
Initiate Justice Action
Interfaith Worker Justice - San Diego
Jesse's Place Org
Legal Aid At Work
Legal Services for Prisoners With Children
Milpa
Milpa Collective
Muslim American Society
Muslim American Society - Public Affairs & Civic Engagement (MASPACE)
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
Orange County Rapid Response Network
Partnership for The Advancement of New Americans
Pillars of The Community
Prosecutors Alliance California
Racial Justice Coalition of San Diego
Restore Oakland, INC.
Returning Home Foundation
Rise Up San Diego
Rise Up- San Diego
Riverside All of Us or None
Rolling for Rights

Rtime Co.
Safe Return Project
San Francisco Financial Justice Project
San Francisco Mayor London Breed
San Francisco Public Defender
San Francisco Treasurer José Cisneros
San Marcos Democratic Club
Santa Cruz Barrios Unidos INC.
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County San Diego
Showing Up for Racial Justice Santa Cruz County
Showing Up for Racial Justice, San Diego (SURJ-SD)
Sister Warriors Freedom Coalition
Social Workers for Equity & Leadership
Southeast Asia Resource Action Center
Starting Over, INC.
Team Justice
The Place4grace
Think Dignity
Transformative In-prison Workgroup
Transitions Clinic Network
Uncommon Law
Universidad Popular
Uprise Theatre
Women's Foundation of California
Worth Rises
Young Women's Freedom Center

2,030 Private Individuals

Opposition
None Submitted.

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

Date of Hearing: June 27, 2023
Counsel: Liah Burnley

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

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

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

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

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

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

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

EXISTING LAW:

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

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

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

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

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

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

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

person in lawful possession of the land:

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

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

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

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

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

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

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

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

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

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

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

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

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

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

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

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

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

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

5) **Prior Legislation**:

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

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

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

Opposition

None submitted.

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

Date of Hearing: June 27, 2023
Counsel: Cheryl Anderson

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

SB 603 (Rubio) – As Amended May 1, 2023

SUMMARY: Creates a process and standards for the release of recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation. Specifically, **this bill**:

1) Provides that recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation are confidential and are not public records.

2) Provides that the children's advocacy center or other identified multidisciplinary team member custodian shall ensure that all recordings of child forensic interviews be released only in response to a court order.

3) Requires the court to issue a protective order as part of the release, unless the court finds good cause that the disclosure of the interview should not be subject to such an order.

4) Specifies the protective order shall include all the following language:

   a) That the recording be used only for the purposes of conducting the party's side of the case, unless otherwise ordered by the court;

   b) That the recording not be copied, photographed, duplicated, or otherwise reproduced except as a written transcript that does not reveal the identity of the child, unless otherwise ordered by the court;

   c) That the recording not be given, displayed, or in any way provided to a third party, except as otherwise permitted, or as necessary in preparation for or during trial;

   d) That the recording remain in the exclusive custody of the attorneys, their employees, or agents, including expert witnesses by either party, who shall be provided a copy and instructed to abide by the protective order;

   e) That, if the party is not represented by an attorney, the party, the party's employees and agents, including expert witnesses, shall not be given a copy of the recording but shall be given reasonable access to view or listen to the recording by the custodian of the recording.

   f) Provides that in a criminal case involving an in pro per defendant, if the court has appointed an investigator, the court may order a copy of the recording be provided to the investigator with a protective order consistent with these provisions and further order the

investigator to return the recording to the court upon conclusion of the criminal case; and,

g) That upon termination of representation or upon disposition of the matter, after all appeals and writs of habeas corpus have been exhausted, attorneys promptly return all copies of the recording.

5) Provides that notwithstanding the above, the children's advocacy center or other identified multidisciplinary team member custodian shall release or consent to the release or use of any recording, upon request, to both of the following:

   a) Law enforcement agencies authorized to investigate child abuse, or agencies authorized to prosecute juvenile or criminal conduct described in the forensic interview and

   b) County counsel evaluating an allegation of child abuse.

6) Provides that in any court proceeding, release of any recording pursuant to the civil, dependency, or criminal discovery process shall be accompanied by a protective order, unless the court finds good cause that disclosure of the recording should not be subject to such an order.

7) Provides that a child advocacy center where a forensic interview is conducted may use the recording for the purposes of supervision and peer review as required to meet national accreditation standards. Recordings that anonymize the child's face or likeness may be used for training.

8) Provides that recognizing the inherent privacy interest that a child has with respect to the child's recorded voice and image when describing highly sensitive details of abuse or neglect, any and all recordings of child forensic interviews shall not be subject to a Public Records Act request and are exempt from any such request.

9) Provides the recording shall not become a public record in any legal proceeding.

10) Provides that the court shall order the recording be sealed and preserved at the conclusion of the criminal proceeding.

11) Defines "recording" as including audio, video, digital, or any other manner in which the child's voice or likeness is memorialized.

EXISTING LAW:

1) Defines "child abuse and neglect" as including physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse, the willful harming or injuring of a child or the endangering of a person or health of a child. (Pen. Code, §11165.6.)

2) Provides that "child abuse or neglect" does not include a mutual affray between minors or an injury caused by reasonable and necessary forced used by a peace officer acting within the course and scope of their employment. (Pen. Code, §11165.6.)

3) Makes specified persons mandated reporters who are required to make reports of suspected child abuse or neglect to any police department or sheriff. (Pen. Code, §§ 11165.7, 11165.9.)

4) Provides that each county may use a children's advocacy center to implement a coordinated multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment and sets forth standards that a children's advocacy center must meet. (Pen. Code, § 11166.4.)

5) Provides that, among the standards that a children's advocacy center must meet, the children's advocacy center shall verify that interviews conducted in the course of investigations are conducted in a forensically-sound manner and occur in a child-focused setting designed to provide a safe, comfortable, and dedicated place of children and families. (Pen. Code, § 11166.4, subd. (b)(8).)

6) Provides that a county is not precluded from utilizing more than one children's advocacy center. (Pen. Code, § 11166.4, subd. (c).)

7) Provides that the files, reports, records, communications, and working papers used or developed in providing services through a children's advocacy center are confidential and not public records. (Pen. Code, § 11166.4, subd. (d).)

8) Allows for the sharing of confidential information among multidisciplinary team members of the children's advocacy center for the purposes of facilitating a forensic interview or case discussion or providing services to the child or family but the shared records are to be treated as confidential information to the extent required by law by all. (Pen. Code, § 11166.4, subd. (e).)

9) Provides that any employee or designated agent of a child and family advocacy center, as specified, is immune from any civil liability due to participation in the investigative process and services provided, unless they acted with malice or have been charged with or are suspected of abusing or neglecting the child who is the subject of the investigation or services provided. (Pen. Code, § 11166.4, subd. (f).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Currently, California does not have clearly defined legal limits for releasing recorded forensic interviews. Legislation is needed to allow for only the appropriate release of the recordings to counsel in criminal and civil cases. Distribution of these recordings should be for investigation and litigation via a protective order and these sensitive recordings should be secured from a public records act request. We have a responsibility to provide victims of child abuse with the strongest protections possible. Without any protections in place, children and their families may be discouraged from participating in recording forensic interviews, which is pivotal to the investigation of child abuse."

2) **Children's Advocacy Centers:** According to the Children's Advocacy Centers of California, "A children's advocacy center (CAC) is a child-friendly facility in which law

enforcement, child protection, prosecution, mental health, medical and victim advocacy professionals work together to investigate abuse, help children heal from abuse, and hold offenders accountable. In the neutral setting of the CAC, team members can collaborate on strategies that will aid investigators and prosecutors without causing further harm to the victim. This innovative approach significantly increases the likelihood of a successful outcome in court and long-term healing for the child. Kids can go on to live full and rich lives, and child advocacy centers help them get there." (https://www.cacc-online.org/.)

3) **Recordings of Interviews at a Children's Advocacy Center**: Existing law allows each county to use a children's advocacy center to coordinate a multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment. The law sets forth standards that each advocacy center must meet. The law does not, however, set forth a uniform process for releasing recordings that are made of the forensic interviews of children at these centers – i.e., recordings that could be used in criminal or civil cases. (See Pen. Code, § 11166.4.)

   By contrast, current law provides that suspected child abuse reports (SCARS) are confidential and specifies how they may be disclosed. (Pen. Code, § 11167.5.) Similarly, current law provides for the confidentiality of forensic medical exams performed on sexual assault suspects and outlines how they may be disclosed. (Pen. Code, § 11160.1.)

   This bill would create a process and standards for the release of recordings of interviews taken by a children's advocacy center in the course of a child abuse investigation. It would provide that these recordings are confidential and not public records. It would authorize their release only in response to a court order. Additionally, it would require the court to issue a protective order when allowing the release of the documents, unless the court finds good cause that disclosure should not be subject to a protective order.

   This bill would specify what a protective order must include: that the recording shall only be used for the party's side of the case unless ordered by the court; that the recording shall not be copied etc. except as a written transcript that does not identify the child unless ordered by the court; that the recordings not be given to a third party, except for the employees or investigators of the attorney who have also been informed of the protective order; that a pro per party and their employees must not be given a copy of the recording but must be given reasonable access[1] to view or listen to the recording; that the court may order a copy to be provided to a pro per party's court appointed investigator and returned at the conclusion of the case; and that upon termination of representation or after all appeals and writs have been exhausted, attorneys return all copies.

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[1] The Ninth Circuit has held that "time to prepare and some access to materials and witnesses are fundamental to a meaningful right of representation," and that "[a]n incarcerated defendant may not meaningfully exercise his right to represent himself without access to law books, witnesses, or other tools to prepare a defense." (*Milton v. Morris* (9th Cir. 1985) 767 F.2d 1443, 1446 (citing *Faretta v. California* (1975) 422 U.S.806, 818); see also *United States v. Sarno* (9th Cir. 1995) 73 F.3d 1470, 1491 ["[T]he Sixth Amendment demands that a pro se defendant who is incarcerated be afforded reasonable access to 'law books, witnesses, or other tools to prepare a defense.'" (quoting *Milton*, 767 F.2d at 1446]; see also *People v. Blair* (2005) 36 Cal.4th 686, 733-734 ["the crucial question underlying . . . defendant's constitutional claim[] is whether he had reasonable access to the ancillary services that were reasonably necessary for his defense"].)

In addition, this bill would also provide for the release of the recording to law enforcement agencies investigating child abuse or agencies prosecuting juvenile or criminal conduct, as well as to county counsel investigating allegations of child abuse.

4) **Argument in Support**: According to the *Los Angeles County District Attorney's Office*, the sponsor of this bill, "SB 603 aims to prevent the unauthorized release of child forensic interviews, which are recorded interviews of children conducted by specially trained forensic interviewers in cases involving suspected child abuse. During these interviews, children often disclose highly sensitive information related to physical and sexual abuse. Currently, California does not have clearly defined legal limits for the release of these recordings. This results in children's advocacy centers being directly subpoenaed for copies of these recordings without any guidelines on their distribution. There have been instances where once copies of these recording have been obtained from children's advocacy centers, they have been duplicated, copied, and re-distributed to individuals who should not have access to the recordings. This provides a daily challenge for children's advocacy centers throughout California who seek to protect the rights and privacy interests of these vulnerable victims.

   "SB 603 seeks to address this legal deficiency by giving victims of child abuse the privacy protection they need and deserve under California law. To that end, the bill proposes to amend Penal Code Section 11166.4 under the Child Abuse and Neglect Reporting Act (CANRA). CANRA governs the responsibilities of children's advocacy centers and multidisciplinary teams, and it establishes rules for the manner in which forensic interviews may be conducted. Section 11164.4 establishes the confidential nature of information obtained by multidisciplinary teams in preparation for child forensic interviews and to provide services to the child or their family. However, it currently does not establish any guidelines for the distribution of these recordings once they have been directly subpoenaed from children's advocacy centers. It also does not establish any confidentiality rules or guidelines to protect these recordings from unnecessary duplication or distribution beyond what is necessary for investigation and litigation.

   "Victims of child abuse are incredibly vulnerable and deserve significant protection under the law. SB 603 seeks to set consistent guidelines for the protection of child interviews conducted in response to suspected child abuse by statutorily mandating that such recordings only be released through an appropriate court order, with a protective order, and under limited circumstances.

   "The provisions of this bill are not novel. Similar rules are already in place for the release of suspected child abuse reports (SCARS) and suspect forensic examinations. Moreover, states such as Washington, Nebraska, and Tennessee have all codified protections for child forensic interviews. Additionally, in California, Alameda County has a local ordinance codifying such protections."

5) **Argument in Opposition**: According to the *Consumer Attorneys of California*, "CAOC agrees with your goal of protecting children victims of sexual abuse and in ensuring access to justice for all victims. Attorneys who represent children of sexual abuse must not be limited in their access to information that can assist them in prosecuting cases against violators. As drafted, SB 603 limits otherwise available evidence to the children and their legal representatives. There are many examples of why a juvenile victim of crime might need access to their own forensic evidence, but the basic premise is that they should have access to

any evidence they have provided in order to assert their rights either in conjunction with a governmental agency or a civil attorney. This interview is of them.

"This information and other other [sic] evidence related to the crimes they have been subjected to should be a matter of right. They are rarely, if ever given access to a police department's file, and never to a District Attorney's file. That process is one-sided and must be balanced so that children who are victimized can assert their rights in whatever way they see fit pursuant to Marsy's Law. Further, if guardian ad litem is considering litigation, they should be able to obtain what is usually the only evidence of what occurred before making that decision. Similarly, no pre-filing settlements are possible without such evidence as all sides need to be able to evaluate what occurred. We should be doing everything we can to improve access to justice for children who are crime victims, not making it harder.

"To that end, we have requested the following very narrow amendment:

"Notwithstanding any other provision in this statute, the child's legal representative may obtain the video with the consent of the custodian. The video evidence may not be used in any manner other than by the child's legal representative for prosecuting a civil case."

6) **Prior Legislation**:

a) AB 2741 (B. Rubio) Chapter 353, Statutes of 2020, authorized counties to create Child Advocacy Centers to implement a coordinated multidisciplinary approach to investigative reports of child abuse.

b) AB 1221 (Cooley), of the 2019-2020 Legislative Session, was identical to AB 2741. AB 1221 was vetoed by the Governor.

c) AB 320 (Cooley), of the 2017-18 Legislative Session, was identical to AB 2741. AB 320 was held without a hearing in the Assembly Human Services Committee at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
Child Abuse Listening Interviewing Coordination (CALICO) Center
Children's Advocacy Centers of California
Children's Legacy Center
Community Violence Solutions/children's Interview Center
Crime Victims Alliance
Junior Leagues of California State Public Affairs Committee (CALSPAC)
Los Angeles County Sheriff's Department
Modoc County Victim Services
Petaluma Police Department
Prosecutors Alliance California
Sonoma County District Attorney's Office

The Children's Advocacy Center for Child Abuse Assessment and Treatment

1 Private Individual

Opposition

California Public Defenders Association
Consumer Attorneys of California

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

Date of Hearing: June 27, 2023
Chief Counsel: Sandy Uribe

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

SB 690 (Rubio) – As Introduced February 16, 2023

SUMMARY: Extends the statute of limitations for the crime of domestic violence from 5 years to 15 years. Specifically, **this bill**:

1) States that, notwithstanding any other law, a prosecution for the offense of domestic violence as proscribed by Penal Code section 273.5 may be commenced within 15 years of the crime.

2) Provides that this statute of limitations applies only to crimes that were committed on or after January 1, 2024, and to crimes for which the statute of limitations that was in effect before January 1, 2024 has not expired as of that date.

EXISTING LAW:

1) Provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, someone with whom the person has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child, is guilty of domestic violence. (Pen. Code, § 273.5.)

2) Defines "traumatic condition" as "a condition of the body, such as a wound, or external or internal injury, … whether of a minor or serious nature, caused by a physical force." (Pen. Code, § 273.5. subd. (d).)

3) Punishes domestic violence by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to $ 6,000 or by both that fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)

4) Establishes a five-year statute of limitations for domestic violence. Provides that the five-year statute of limitations only applies to crimes that were committed on or after January 1, 2020, and to crimes for which the statute of limitations that was in effect prior to January 1, 2020, has not lapsed as of that date. (Pen. Code, § 803.7.)

5) Provides that prosecution for crimes punishable by imprisonment for eight years or more must be commenced within six years after commission of the offense. (Pen. Code, § 800.)

6) Provides that prosecution for other felonies punishable by less than eight years must be commenced within three years after commission of the offense. (Pen. Code, § 801.)

7) Provides, generally, that the statute of limitations for most misdemeanors is one year. (Pen. Code, § 802, subd. (a).)

8) Provides that there is no statute of limitations for crimes punishable by death, or by imprisonment in the state prison for life, or by life without the possibility of parole. (Pen. Code, § 799, subd. (a).)

9) Provides that there is no statute of limitations for specified sex crimes if the crime was committed on or after January 1, 2017, or if the crime was committed before that date but the statute of limitations had not expired on January 1, 2017. (Pen. Code, § 799, subd. (b)(1).)

10) Provides that, notwithstanding any other time limitations, for specified sex crimes that are alleged to have been committed when the victim was under the age of 18, prosecution may be commenced any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a).)

11) Provides that notwithstanding any other time limitations, if other provisions extending the statute of limitations for sex crimes do not apply, prosecution for a felony offense requiring sex offender registration shall be commenced within 10 years after commission of the offense. (Pen. Code, § 801.1, subd. (b).)

12) Provides that, notwithstanding any other limitation of time, a criminal complaint for specified sex crimes may be filed within one year of the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid (DNA) testing if specified conditions are met. (Pen. Code, § 803, subd. (g)(1).)

13) Provides that if more than one time period described in the statute of limitations scheme applies, the time for commencing an action is governed by that period that expires the latest in time. (Pen. Code, § 803.6, subd. (a).)

FISCAL EFFECT:

COMMENTS:

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

2) **Statute of Limitations Generally**: The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.)

   The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and repose. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

   The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.

   Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes

committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of relative interests of the state and the defendant in administering and receiving justice.

In *Stogner v. California* (2003) 539 U.S. 607, the United States Supreme Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

The amount of time a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner*, *supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

> The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provid[e] predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (*People v. Turner*, *supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

For most types of offenses, the statute of limitations begins to run on the day that the offense was actually committed. However, the statute of limitations period does not commence as to continuing offenses until the entire course of conduct is complete. (*People v. Zamora*, *supra*, 18 Cal.3d 538.) And in cases involving crimes such as fraud or embezzlement the statute of limitations may begin to run at the point that the offense is discovered. (See e.g. Pen. Code, § 803, subd. (c).)

Until January 1, 2020, the statute of limitations to prosecute a criminal case of felony domestic violence was three years. (*People v. Sillas* (2002) 100 Cal.App.4th Supp. 1, 5.) However, SB 273 (S. Rubio), Chapter 546, Statutes of 2019, extended the statute of limitations for this crime to five years. (See Pen. Code, § 803.7.) This extension was based on the recognition that in some cases there are reasons why a victim of domestic violence might not immediately report the crime to law enforcement, such as emotional manipulation, financial insecurity, or having no place to go. However, it should be noted that, initially SB 273 sought a much longer statute of limitations and that the longer statute would only apply in limited circumstances. Ultimately, the Legislature decreased the proposed statute of limitation to the current five years.

This bill would extend the statute of limitations in domestic violence cases even further to 15 years. This statute of limitations would be equally applicable whether or not the crime was being charged as a felony or a misdemeanor, and regardless of the circumstances. Notably, for any cases occurring after the new five-year statute of limitations, there is still 1.5 years available on the current statute of limitations. Based on this, it is unclear why the statute of limitations needs to be further extended.

It bears repeating, that as noted above, there is a strong public policy against extending the statute of limitations. Memories fade as time passes. Evidence that might have been gathered by the police is lost. Witnesses move or die. Fairness and due process demand prosecution be commenced in a reasonable time so the accused may be able to gather evidence to prove his or her innocence. And despite its traumatic nature, domestic abuse does not fall within the type of crimes that would normally warrant extension. The domestic abuse statute, Penal Code section 273.5, prohibits the willful infliction of corporal injury resulting in a traumatic condition upon a victim with which the offender has a *specified domestic relationship*. So, the identity of the perpetrator is not at issue. Moreover, domestic abuse is not the type of crime where the person does not discover until a later date that the crime has occurred. As a general matter, most people know that a battery is criminal conduct. In fact, if a victim of abuse is taking photographs of sustained injuries, the victim recognizes that criminal conduct has occurred. It seems a rejection of firmly rooted public policy to further significantly extend the statute of limitations in this type of case.

3) **Ex Post Facto:** In *Stogner v. California*, *supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp.

610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.)

This bill states that it the provisions eliminating the statute of limitations for the specified crimes will apply either only to crimes committed after its effective date, or to crimes for which a statute of limitations that was in effect before its effective date has not run as of that date. In other words, the bill extends current limitations periods, but does not try to revive time-barred cases. Therefore, there do not appear to be any ex post facto concerns raised by this bill.

4) **Argument in Support**: According to the *California District Attorneys Association*, "Victims of domestic violence often hide their abuse – and may do so for years on end. Currently, when this happens justice cannot be served through prosecution due to the short statute of limitations. Having the ability to reach back 15 years will help us hold abusers accountable and provide substantial justice for victims.

"CDAA supports SB 690 because it protects victims and survivors by providing them with more time to come forward and seek the justice they deserve."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "SB 690 would extend the current five year statute of limitations for misdemeanors and felonies to 15 years for domestic violence. This five-year statute of limitations for domestic violence was just enacted in 2019 (SB 273). Previously the statute of limitations for misdemeanor domestic violence was one year and three years for felonies.

"Nothing has happened in the intervening 3-1/2 years since SB 273 became effective that warrants upsetting the careful balancing of interests by the Legislature in 2019. We strongly oppose SB 690's extension of the statute of limitations for domestic violence prosecutions. The extension of the statute of limitations will result in the conviction of innocent people, is bad public policy and wastes scarce resources that could be better spent on evidence based and effective strategies to end domestic violence.

"Criminal statutes of limitations in the United States date back to colonial times, with the first such statute appearing as early as 1652. The statutes' fundamental purpose is to protect people accused of crimes from having to face charges based on evidence that may be unreliable, and from losing access to the means to defend themselves. The United States Supreme Court has stated that statutes of limitations are considered 'the primary guarantee against bringing overly stale criminal charges' and that they 'protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time…' Likewise, the California Supreme Court has noted that statutes of limitations 'encourage the swift and effective enforcement of the law, hopefully producing a stronger deterrent effect.'

"With the passage of time, memories fade, witnesses die, records and biological evidence are lost or destroyed. All of this makes it more likely that an innocent person will be wrongly convicted.

"Statutes of limitations also serve the purpose of encouraging swift investigations and prosecutions. Given the incidence of domestic violence in the United States and

California, proponents of SB 690 rightly complain that relatively few domestic violence cases are actually investigated and prosecuted in California. The primary reason for this is not because of statutes of limitations. Rather, the failure to investigate and prosecute domestic violence results from choices made about allocation of resources and priorities and lingering ignorance about the generational harms of domestic violence. Extending the statute of limitations will do nothing to address those obstacles."

6) **Related Legislation**: SB 601 (McGuire), among other things, extends the statute of limitations for a violation of various prohibitions related to a license, certificate, permit or registration issued by the Department of Consumer Affairs from one year to three years. SB 601 is pending hearing in the Assembly Committee on Business and Professions.

7) **Prior Legislation**:

   a) SB 273 (S. Rubio), Chapter 546, Statutes of 2019, provides that, notwithstanding any other law, a prosecution for the crime domestic violence prosecuted under Penal Code section 273.5 may be commenced within five years of the crime.

   b) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extends the statute of limitations for the crime of concealing an accidental death to no more than four years after the concealment.

   c) SB 813 (Leyva), Chapter 777, Statutes of 2016, eliminated the statute of limitations for specified sex crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Advocates for Child Empowerment and Safety
Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Federation of Teachers Afl-cio
California Police Chiefs Association
California Protective Parents Association
Claremont Police Officers Association
Corona Police Officers Association
Crime Victims Alliance
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Marjaree Mason Center
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association

Riverside Police Officers Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
San Francisco Public Defender

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

Date of Hearing: June 27, 2023
Counsel: Liah Burnley

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

SB 753 (Caballero) – As Amended May 18, 2023

SUMMARY: Creates a new alternative misdemeanor/felony (wobbler) for cultivating more than 50 cannabis plants under specified conditions involving pesticide pollution and water diversion. Specifically, **this bill**:

1) Creates a new crime for any person 18 years of age or older, to plant, cultivate, harvest, dry, or processes more than 50 living cannabis plants, or any part thereof, if it involves any of the following:

   a) A violation of the Food and Agriculture Code relating to pesticides;

   b) Taking or using water from conveyance or storage facilities without permission from the owner; or,

   c) Extraction or use of groundwater from an unpermitted well, or from a permitted well in excess of any restrictions established by the Water Code or local ordinance.

2) Provides that this new crime is a wobbler, punishable as follows:

   a) As a misdemeanor, punishable by imprisonment in a county jail for not more than six months, a fine of not more than $500 or both; or,

   b) As a felony, punishable by imprisonment in a county jail for 16 months, or two or three years.

3) Adds intentionally or with gross negligence causing substantial environmental harm to surface or ground water to the conditions for which a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished with a felony by imprisonment in a county jail for 16 months, or two or three years.

EXISTING LAW:

1) Provides that any person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living cannabis plants is guilty of an infraction and a fine of not more than $100. (Health & Saf. Code, § 11358, subd. (b).)

2) Provides that the penalty any person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants is imprisonment in a county jail for a period of not more than six months or by a fine of not more than $500, or by both that fine

and imprisonment. (Health & Saf. Code, § 11358, subd. (c).)

3) Provides that a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished by imprisonment in a county jail for 16 months, or 2 or 3 years, if any of the following conditions exist:

    a) The person has one or more prior convictions for specified felonies or for an offense requiring sex offender registration;

    b) The person has two or more prior convictions for planting, cultivating, harvesting, drying, or processing more than six living cannabis plants; or,

    c) The offense resulted in any of the following:

        i. Illegal diversion of water;

        ii. Violation of laws related to the discharge of waste;

        iii. Violation of laws related to polluting waters of the state;

        iv. Diversion or obstruction of the natural flow of rivers, streams, and lakes;

        v. Dumping hazardous substances or other unlawful activity related to hazardous waste;

        vi. Violations of law related to endangered and threatened species, the Migratory Bird Treaty Act, or the unlawful taking of fish and wildlife; or,

        vii. Intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources. (Health & Saf. Code, § 11358, subd. (d).)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement**: According to the author, "For years, thousands of illicit cannabis growers, primarily in rural areas, have put the health and safety of Californians, wildlife, and our water supplies at risk by engaging in water theft and environmental pollution as part of their operations. In 2020 alone, as much as 36 million liters of water was used for illicit cannabis grow. Illegal grow sites have been found to divert water from sensitive wetlands and rivers, harming sensitive ecosystems. The extensive use of pesticides, nitrates, and rodenticides pollute groundwater supplies and rivers, making the water unfit for drinking and causing harm to wildlife. Because some sites go undetected for years, the potential environmental damage could last generations.

    "SB 753 addresses the impact of illicit cannabis farms in two ways. First, by clarifying that groundwater is a public resource, and second, by establishing that the theft of groundwater,

unauthorized tapping into a water conveyance or storage infrastructure, or digging an unpermitted, illegal well may be punished as a misdemeanor or imprisonment as a felony. Providing deterrents to water theft and groundwater pollution appropriately recognizes the danger these illegal grows pose long-term to both humans, our environment, and wildlife."

2) **This Bill would Create a New Felony:** Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), was adopted by the voters on November 8, 2016, and became effective the following day. (California Secretary of State (SOS), *Statement of the Vote* at p. 12 https://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf> (June 20, 2023).) Proposition 64 made several major changes including: decriminalizing the possession of up to one ounce of cannabis, and up to eight grams of cannabis concentrates; decriminalizing the cultivation of up to six cannabis plants; reducing the penalties for specified cannabis offenses from felonies to misdemeanors, and from misdemeanors to infractions; and creating a statutory framework to regulate the cultivation, distribution, sale and tax of cannabis products. (SOS, *Proposition 64* (2016), at pp. 178-210, <https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf> [June 20, 2023].)

Under Proposition 64, generally cannabis cultivation of more than six cannabis plants is illegal. Proposition 64, calls for increased penalties for cannabis cultivation in certain circumstances. Individuals 18 years of age or over who cultivate more than six cannabis plants may be guilty of a felony, punishable by a imprisonment in a county jail for 16 months, or two or three years, if:

a) The person has one or more prior convictions for a specified felony;

b) The person has two or more prior convictions for cannabis cultivation;

c) The offense resulted in violations of the Water Code relation to illegal diversion and discharge of water, violations of the Fish and Game Code relating to water pollution and endangered species, fish and wildlife; violations of the Penal Code relating to pollution and environmental hazards; violations of the Health and/or Safety Code relating to hazardous waste; or,

d) The offence was done intentionally or with gross negligence causing substantial environmental harm to public lands or other public resources.

This bill would, in addition to the above existing penalties, create an additional wobbler for cannabis cultivation. Specifically, a person could be charged with a misdemeanor punishable by imprisonment in the county jail for not more than six months, a $500 fine, or both, or with a felony punishable by imprisonment in a county jail for 16 months, or two or three years if they cultivate more than 50 cannabis plants and the offense involves: (1) a violation of the Food and Agriculture Code relating to pesticides; (2) taking or using water without permission from the owner; or, (3) extraction of groundwater from an unpermitted well, or from a permitted well in excess of any restrictions established by the Water Code or local ordinance. To the extent these felonies require imprisonment in county jails, jails have been grappling with their overcrowding issues, heightened by COVID-19. (PPIC, *California's Prison Population Drops Sharply, but Overcrowding Still Threatens Prisoner Health* (March 2, 2021) <https://www.ppic.org/blog/californias-prison-population-drops-sharply-but-

overcrowding-still-threatens-prisoner-health/> [June 20, 2023].)

As pointed out by opponents of this bill, "Increasing criminal penalties could have the unintended consequence of targeting low-level employees of cannabis operations including migrant workers." By creating a new felony, this bill would also subject these individuals not only to fines, fees and incarceration, but also to numerous collateral consequences. For example, for non-U.S. citizens, the federal immigration consequences of a drug conviction are severe. For example, upon a drug conviction, a non-citizen may become automatically deportable and inadmissible, and the conviction may subject the defendant to mandatory immigration detention, without bond. (8 U.S.C. § 1227(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1226(c)(1).)

Further, the new felony proposed by this bill could perpetuate racial disparities. Communities of color continue to experience the negative impacts of cannabis prohibition while largely remaining locked out of the benefits of the legalized cannabis market. Concerns have been raised that policies aimed at water usage for unlawful cannabis cultivation have been used to targeted minority communities. (See, e.g., *"ro" Lo v. Cnty. of Siskiyou*(E.D. Cal. 2021) 558 F. Supp. 3d 850, 869 ["the dehydration and de facto expulsion of a disfavored minority community cannot be the price paid in an effort to stop illegal cannabis cultivation and any attendant harms]; Los Angeles Times, *A California county cuts off water to Asian pot growers. Is it racism or crime crackdown?* (Oct. 26, 2021) <https://www.latimes.com/california/story/2021-10-26/weaponizing-california-water-against-illegal-pot-growers> [June 20, 2023]; The Guardian, *Water, weed and racism: why Asians feel targeted in this rural California* county (April 8, 2022) <https://www.theguardian.com/us-news/2022/apr/08/california-asian-discrimination-water-rights-siskiyou> [June 20, 2023].)

As a practical effect, this bill could have a disparate impact, by making cultivating over 50 cannabis plants a felony for some, but not for others. This bill would make it a wobbler if a person cultivates 50 or more cannabis plants involving the use of groundwater in excess of restrictions "established by local ordinance." Some cities and counties could enact local ordinance that prohibit the use of groundwater for cannabis altogether. As a result, anyone who cultivates over 50 cannabis plants in a city with a local ordinance would be guilty felony; a person who does the same in a city or county without such an ordinance would only be guilty of an infraction or misdemeanor.

Such local ordinances are not unprecedented. For example, Siskiyou County Code section 3-13.702 provides that "No person or entity shall engage in the act of wasting or unreasonably using groundwater by extracting and discharging groundwater underlying Siskiyou County for use in cultivating cannabis… ." Shasta County Code section 18.09.020 provides that "No person or entity shall engage in the act of wasting or unreasonably using groundwater by extracting and discharging groundwater underlying Shasta County for use in cultivating cannabis… ." This could create confusing patchwork of standards throughout the State—allowing vastly different criminal consequences for the same conduct.

3) **Numerous Criminal Penalties Address the Conduct this Bill Seeks to Prohibit**: To the extent this bill is aimed at increasing penalties, there are currently a number of laws that prosecutors can use to charge these crimes that call for increased penalties.

***Violations of the Food and Agriculture Code*:** This bill would make it a wobbler to cultivate more than 50 cannabis plants, if the offense involves a violation of the Food and Agriculture Code relating to pesticides. However, Food and Agriculture Code section 12996, already provides that any person who violates the code relating to pesticides is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $5,000 nor more than $50,000, or no more than six months imprisonment, or both fine and imprisonment. Subsequent convictions are subject to increased fines. If the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to human health or the environment, the person is subject to imprisonment for up to one year, as specified, or a fine or not less than $15,000 and no more than $100,000, or both the fine and imprisonment.

***Taking or Using Water without Permission*:** This bill would make it a wobbler to cultivate more than 50 cannabis plants, if the offense involves taking or using water without permission of the owner. It is a crime to steal water. A person who takes or uses water without permission, if the value is over $950, can be charged with grand theft, a felony. (Pen. Code, § 487.) A person who steals less than $950 worth of water can be charged with petty theft. (Pen. Code, § 490.2.) Further, the unauthorized diversion of water is trespass. (Wat. Code, § 1052.) A person who diverts water without authorization for the purposes of cultivating more than six cannabis plants can already be charged with a felony. (Health & Saf. Code, § 11358, subd. (d)(2)(B).)

***Extraction or Use of Groundwater*:** This bill would make it a wobbler to cultivate more than 50 cannabis plants, if the offense involves extraction or use of groundwater from an unpermitted well, or from a permitted well in excess of specified restrictions in the Water Code or by local ordinance. As stated above, extracting water from a well without authorization could be charged as felony grand theft, or misdemeanor petty theft. (Pen. Code, §§ 487, 490.2.) In addition, any who causes water unnecessarily to flow from the well or to go to waste is guilty of a misdemeanor. (Wat. Code, § 307.) Digging a well without filing required report with the state is a misdemeanor. (Wat. Code, § 13754.)

According to the author, the intent of this bill, in part, is to deter water pollution. There are many offenses that cover this conduct. Penal Code section 347 makes it a felony, punishable by imprisonment in the state prison for two, four, or five years to put any harmful substance in any spring, well, reservoir or public water supply. It is also a felony to cultivate six or more cannabis plants and to illegally divert or discharge wastewater. (Health & Safe. Code, § 11358, subd. (d)((3)(B).) Any person who knowingly or negligently violates any water waste discharge requirements, violates provisions of the federal Clean Water Act, or introduces any pollutant or hazardous substance into a sewer system or a publically owned treatment works can be punished by exorbitant fines ranging from $5,000 to $2 million per day of violation, and such conduct could be charged as a felony, punishable by imprisonment for two, three, or four years. (Wat. Code, § 13387.) The Fish and Game Code prohibits depositing any material deleterious to life in the waters of this state, a violation of which is punishable by a $25,000 fine and civil penalties. (Fish & Game Code, § 5650.) A person who cultivates more than six cannabis plants and violates this provision of the Fish and Game Code can be charged with a felony, in addition to the civil penalties. (Health & Saf. Code, § 11358, subd. (d)(2)(C).)

In addition, there are several other offenses that this conduct could be prosecuted as including, but not limited to: cultivating more than six cannabis plants, which is a felony if

the person has one or more prior specified convictions, or if it results in specified environmental violations (Health & Saf. Code, § 11358, subds. (c) & (d)); vandalism, which can be prosecuted as a felony if the damage exceeds $10,000 (Pen. Code, § 594); trespass (Pen. Code, §§ 554, 602); and, tampering with public water system, which is a felony (Health & Saf. Code § 116750). Moreover, under California law, if two or more persons conspire to commit any crime, including unlawful cannabis cultivation, they can be charged with a felony for the conspiracy itself. Thus, any time there is more than one person involved, they can be charged as felony conspiracy. (Pen. Code, § 182.)

4) **Increased Penalties Do Not Deter Crime**: Proponents of this bill contend that, "California state law penalties are not strong enough to deter criminals from engaging in widespread illegal cannabis farming, nor does it recognize the danger illegal grows pose to water supply and groundwater pollution." However, as discussed above there is a wide range of existing penalties, including felony penalties, aimed at deterring this conduct. Given the number of existing penalties, it is likely that this bill would not have any additional deterrent effect.

   Further, research shows that increasing the severity of the punishment does little to deter the crime. Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

   According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs. (National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [June 21, 2023].) "If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message." (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine (April 2014) at pp. 130 -150 <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs> [June 21, 2023].)

5) **California Constitutional Limitations on Amending a Voter Initiative:** Because Proposition 64 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal

without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent.

As to the Legislature's authority to amend the initiative, Proposition 64 states: "the provisions of the Act may be amended by a two-thirds vote of the Legislature to further the purposes and intent of the Act." (*Proposition 64, supra,* § 10.) The purpose of Proposition 64 "is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax commercial growth and retail sale of marijuana," not to increase penalties and criminalize cannabis offenses. (*Id.*, at § 3.)

This bill creates and increases penalties for cannabis offenses addressed by Proposition 64. As such, it is arguably inconsistent with the purpose and intent of Proposition 64 and pursuant to the above-referenced provisions of the California Constitution, may require voters to authorize the provisions.

6) **Argument in Support**: According to the *Siskiyou County Board of Supervisors*, "This measure clarifies existing state law to explicitly penalize illegal cannabis growers who pollute groundwater and illegally 'take' water.

"Illegal cannabis farms are a serious, growing threat throughout California. Illicit cannabis cultivators frequently engage in human trafficking, water theft, and environmental pollution as part of their operations. Because some sites go undetected for years, the potential environmental damage could last for generations. The widespread use of dangerous and unregistered pesticides at illegal cannabis farms can be lethal to both humans and wildlife, posing immediate and long-term risks to those working in and near these sites and can pollute community drinking water sources. In addition, many of the communities plagued with illicit cannabis cultivation continually face drought emergencies, reinforcing the need to protect this finite resource.

"California state law penalties are not strong enough to deter criminals from engaging in widespread illegal cannabis farming, nor does it recognize the danger illegal grows pose to water supply and groundwater pollution. CalMatters1 recently reported that these actions have resulted in completely disrupting or jeopardizing water sources for many areas throughout the state. Additional tools are needed to protect the public's health and safety as well as further discourage illicit cannabis operators while strengthening the market for those who operate legally.

"SB 753 amends Section 11358 of the Health and Safety Code to include groundwater as a public resource, and establish that the theft of groundwater, unauthorized tapping into a water conveyance or storage infrastructure, or digging an unpermitted illegal well, may also be punished by imprisonment. Stronger penalties are an important step to deter illicit cannabis activities and the harmful effect it is having on our limited water resources."

7) **Argument in Opposition**: According to *Drug Policy Alliance* (DPA), "SB 753 seeks to take California backwards to a time when the state responded to marijuana offenses with felony convictions and prison sentences. California voters have signaled, again and again, their desire to unwind the failed War on Drugs. Reversing course and creating new felonies, and all the collateral consequences that come with a felony conviction, not only flies in the face of multiple statewide elections, but it is also simply bad policy. Societal harms associated with cultivation of cannabis are not alleviated by felony convictions and ever-increasing penalties. Rather, these convictions impose their own harm, devastating vulnerable communities, particularly communities of color. Additionally, this bill would expose people to higher penalties because the activity involves growing cannabis beyond the permissible limit – it would amount to net-widening through drug prohibition. [...]

   "We are also concerned that this bill will target low-level employees of a cannabis operation instead of going after the owner operators. While DPA understands the need to preserve the integrity of our water systems, DPA strongly opposes creating a new crime that can subject front-line workers to a felony offense when the focus should be centered on large operations and those owner/major operators."

8) **Related Legislation**:

   a) SB 756 (Laird), would authorize a regional water board to participate in an inspection of an unlicensed cannabis cultivation site, as specified. SB 756 is pending in the Assembly Judiciary Committee.

   b) AB 1684 (Mainschein), would expand the authorization for an ordinance providing for the immediate imposition of administrative fines or penalties to include all unlicensed commercial cannabis activity, as specified. AB 1648 is pending in the Senate Judiciary Committee.

9) **Prior Legislation**:

   a) SB 1426 (Caballero), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 1426 was held in the Senate Appropriations Committee.

   b) AB 195 (Committee on Budget and Fiscal Review), Chapter 56, Statutes of 2022, among other things, authorized, for a violation resulting from unlicensed cannabis cultivation, a civil action brought by a county counsel or city attorney, as specified.

   c) AB 2421 (Rubio), of the 2021-2022 Legislative Session, would have authorized a county counsel to file a civil action relating to unlawful water pollution and unauthorized water diversions due to unlicensed cannabis cultivation on behalf of the state. This bill was never heard by the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Legal Document Assistants (CALDA)
California Groundwater Coalition
California Special Districts Association
County of Monterey
County of Siskiyou
Rural County Representatives of California (RCRC)
San Bernardino County
San Bernardino; County of

Oppose

Drug Policy Alliance
San Francisco Public Defender
California Norml (UNREG)

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

Date of Hearing: June 27, 2023
Chief Counsel: Sandy Uribe

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

SB 796 (Alvarado-Gil) – As Amended April 27, 2023

SUMMARY: Creates a new crime of threatening a school or place of worship, punishable as an alternate felony-misdemeanor. Specifically, **this bill**:

1) Provides that any person who, by any means including via an electronic act, willfully threatens to commit a crime which is reasonably likely to result in death or great bodily injury to any person who may by on the grounds of a school or place of worship, with the specific intent that the statement be taken as a threat, even if there is no intent to carry it out, and where the statement on its face and under the circumstances in which it is made is so unequivocal, unconditional, and specific as to convey a gravity of purpose and immediate prospect of execution of the threat, and which causes a person or persons reasonably to be in sustained fear for their own safety or that of another, is guilty of a crime.

2) States that the new crime is an alternate felony-misdemeanor, punishable by imprisonment in county jail for a term not exceeding one year, or in county jail for 16 months, or 2 or 3 years pursuant to realignment.

3) Specifies that a person under 18 years of age who violates this section is guilty of a misdemeanor.

4) States that this section does not preclude punishment under any other law, but prohibits dual conviction for this crime and the general criminal threats statute based on the same threat.

5) Defines the following terms for purposes of this crime:

   a) "Place of worship" means "any church, synagogue, temple, mosque, or other building where religious services are regularly conducted."

   b) "School" means "a state preschool, a private or public elementary, middle, vocational, junior high, or high school, a community college, a public or private university, or a location where a school-sponsored event is or will be taking place and the threat is related to both the school-sponsored event and to the time period during which the school-sponsored event will occur."

   c) "Electronic act" means "the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, a message, text, sound, video, or image; a post on a social network Internet website; or an act of cyber sexual bullying."

EXISTING LAW:

1) States that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement made (either verbally, in writing, or by means of an electronic device) is to be taken as a threat, even if there is no intent of carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, and which thereby causes the person reasonably to be in sustained fear for their own safety or that of their family, is guilty of a crime punishable either as a misdemeanor or felony, as specified. (Pen. Code, § 422.)

2) States that any person who with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution to do, or refrain from doing, any act in the performance of his or her duties, by means of a directly-communicated threat to the person, to inflict unlawful injury upon any person or property, and it reasonably appears to the recipient that such threat could be carried out, is guilty of a crime. (Pen. Code, § 71, subd, (a).)

3) States that any person who with intent to annoy, telephones another or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person's family, or to the person's property is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)

4) Provides that any person who with intent to cause, attempts to cause or causes, another to refrain from exercising his or her religion or from engaging in a religious service by means of a threat directly communicated to such a person to inflict an injury upon the person or property, and it reasonably appears to the recipient that such a threat could be carried out, is guilty of a felony. (Pen. Code, § 11412.)

5) Provides that any person who knowingly threatens to use a weapon of mass destruction with the specific intent that the statement, as defined, or a statement made by means of an electronic device, is to be taken as a threat, even if there is no intent of carrying it out, which on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution, and thereby causes the person reasonably to be in sustained fear of for personal safety or that of their family is guilty of a crime. (Pen. Code, § 11418.5, subd. (a).)

6) Defines "hate crime" as any criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

e) Religion;

f) Sexual orientation; and,

g) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

7) Provides that "hate crime" includes but is not limited to violating or interfering with the exercise of civil rights, or knowingly defacing, destroying, or damaging property because of actual or perceived characteristics of the victim that fit the "hate crime definition." (Pen. Code, §§ 422.55, subds. (a) & (b), 422.6, subds. (a) & (b).)

8) Provides that a conviction for violating or interfering with the civil rights of another on the basis of actual or perceived characteristics of the victim that fit the "hate crime" definition is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed $5,000, or by both the above imprisonment and fine, and a minimum of community service, not to exceed 400 hours, as specified. (Pen. Code, § 422.6, subd. (c).)

9) Makes any other hate crime that is not punishable by imprisonment in the state prison a wobbler (punishable alternatively as a misdemeanor or county jail felony) if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any constitutional right under any of the following circumstances:

a) The crime against the person either includes the present ability to commit a violent injury or causes actual physical injury;

b) The crime against property causes damage in excess of $950; or,

c) The person charged with a crime under this provision has been convicted previously of a hate crime or conspiracy to commit a hate crime, as specified. (Pen. Code, § 422.7.)

10) Provides that unless punishable under the provision above:

a) A person who commits a felony that is a hate crime or attempts to do so, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion; and,

b) A person who commits a felony that is a hate crime, or attempts to do so, and who voluntarily acted in concert with another person in the commission of the crime shall receive an additional term of two, three, or four years in the state prison. (Pen. Code, § 422.75, subds (a) & (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, ""SB 796 would make it unlawful to threaten to commit a crime that is reasonably likely to cause death or great bodily injury at a school or place or worship, even though a specific victim of the crime is not named.

   "Those who receive threats like the ones described, especially those who are or will be at a school or place of worship, may suffer from the fear and trauma of the threatened crime. These threats cause extensive disruption to the community. These kinds of threats require immediate law enforcement response, often with specialized units, in order to gauge whether the threats are credible. This gap in the law makes it difficult to fully investigate and prosecute these cases, despite the damage caused to communities when an individual conveys a threat to kill or cause great bodily injury.

   "Given the reality in California and around the country of mass shootings at schools and religious centers, our laws must be updated to reflect the devastating impact of such threats. This statute fills a gap in the law, allowing clarity for investigating officers and prosecutors, who can now hold individuals accountable for the terror and disruption their words cause."

2) **Elements Required for Criminal Threat Prosecutions**: In order to convict a person under the current criminal threat statute, Penal Code section 422, the prosecutor must prove the following:

   a) that the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;

   b) that the defendant made the threat;

   c) that the defendant intended that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;

   d) that the threat was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat;

   e) that the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and,

   f) that the threatened person's fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

   Penal Code section 422 applies to all criminal threats which will result in death or great bodily injury regardless of location or the exact type of violence that is threatened.

   This bill seeks to create the specific crime of criminal threats when the threat is to take place on a school campus or place of worship. Some prosecutors argue that the current criminal threats statute does fit well into instances of threats of shootings at schools because often times these threats do not specify who the target is. Rather, the threat typically applies to all students or staff at the school.

   A recent example illustrating the existing law's application to threats of violence on school

grounds notwithstanding no specified target can be found in an appellate court's recent ruling. In *In re A.G.* (2020) 58 Cal.App.5th 647, A.G., a high school student posted an image of a realistic-looking gun replica with the caption, "Everybody goes to school tomorrow. I'm taking gum [sic]," on his Snapchat account, which was visible to about 60 "friends." (*Id.* at p. 650.) Another student saw the post, "worried when she saw the story because she knew school shootings happened regularly", and alerted a teacher. (*Id.* at p. 651.) This same student saw a subsequent post by A.G. saying, "Everyone, it wasn't real. I was xanned out." But this did not alleviate her fear. (*Ibid.*) The juvenile court found this conduct was sufficient to constitute a violation of the criminal threats statute, Penal Code section 422. (*Id.* at p. 650.) The minor appealed alleging insufficient evidence to support the adjudication. Specifically, the minor alleged that the evidence failed to show: "(1) he intended his Snapchat post to be understood as a threat; (2) he willfully threatened to unlawfully kill or cause great bodily injury to anyone; (3) he intended to threaten D.J. or Henriquez specifically; (4) any alleged threat was unequivocal or unambiguous to reasonably sustain fear in either D.J. or Henriquez; or (5) any threat to D.J. or Henriquez was sufficiently immediate to place either of them in fear." (*Id.* at p. 653.) The appellate court disagreed with all of A.G.'s contentions and affirmed. (*Id.* at p. 659.)

Similar facts were sufficient to uphold a juvenile adjudication in *In re L.F.* (June 3, 2015, A142296) [nonpub. opn.]. In that case, the adjudged minor was a Fairfield High School student who posted on her Twitter account that she planned to bring a gun to school and shoot people. While she did note specified areas of the school and one of the campus monitors by name in some of her posts, her Tweets were generally targeted at all of the students and staff at the school. The petition filed against the minor alleged that the minor had made criminal threats against "Fairfield High School students and staff" instead of listing specific persons. (*Id.* at p. 4.) The appellate court affirmed the juvenile court's ruling that the minor had violated the existing criminal threats statute, and found that the minor intended her comments to be taken as threats, even though she contended that she was only joking. (*In re L.F.*, supra, A142296. at p. 8; see also Egelko, *Smiling Emojis Aside, Student's Threats Were Serious, Court Says*, San Francisco Chronicle, (June 4, 2015) <http://www.sfgate.com/crime/article/Smiling-emojis-aside-student-s-threats-were-6307626.php>.)

In other words, despite assertions that the current criminal threats statute is insufficient because a general threat to people at a school or place of worship cannot be prosecuted, courts have upheld convictions/juvenile adjudications on these facts. Additionally, it should be noted that as to places of worship, general threats which do not single out an individual can be prosecuted under hate crime laws or a violation of Penal Code section 11412.

3) **Prior Governor Veto Messages**: Two bills introduced in the 2015-2016 Legislative session would have specifically addressed threats at schools. SB 456 (Block) would have provided that any person who threatens to discharge a firearm on a school campus or at a location where a school-sponsored event is or will to take place, is guilty of an alternate felony-misdemeanor. SB 110 (Fuller) would have enacted a new crime prohibiting anyone willfully threatening unlawful violence to another person by any means, including through an electronic act, to occur upon school grounds, with the specific intent that the statement be taken as a threat, and where the threat, on its face and under the circumstances in which it is made, was so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat.

Governor Brown had the following veto message as to both bills:

"No one could be anything but intolerant of threats to cause great bodily injury, especially on school grounds. Certainly not legislators, who voted nearly unanimously for this bill.

"While I'm sympathetic and utterly committed to ensuring maximum safety for California's school children, the offensive conduct covered by this bill is already illegal.

"In recent decades, California has created an unprecedented number of new and detailed criminal laws. Before we keep enacting more, I think we should pause and reflect on the fact that our bulging criminal code now contains in excess of 5,000 separate provisions, covering almost every conceivable form of human misbehavior."

4) **Punishment for This New Crime**: The existing crime of criminal threats is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also becomes a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, 1192.7. subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally it triggers credits limitations. (Pen. Code, § 1170.12.) (See also *People v. Moore* (2004) 118 Cal.App.4th 74.)

   This bill does not add the newly-created crime of criminal threats directed at a school or place of worship to the serious-felony list. Therefore, credits limitations and future enhanced penalty provisions for prior convictions would not apply.

   This bill would specify that a perpetrator can be prosecuted for a threat under the general criminal threats statute, Penal Code section 422, or any other law; but that the person cannot be convicted for both the general statute and this more particularized one.

   This bill would also specify that a minor committing this offense can be adjudicated only of a misdemeanor.

5) **Argument in Support**: According to the *California District Attorneys Association*, the sponsor of this bill, "Far too often, threats are made to 'shoot-up' a place or event, causing fear, trauma, and disruption to the community because of the grim reality that mass-shootings frequently occur in California and around the country. Currently, under Penal Code section 422, these threats are not illegal because a specific person is not named. SB 796 will eliminate this legal loophole. Under your measure, law enforcement will be able to properly act upon and investigate terror-causing events, while also holding accountable those who make these threats.

   "Californians should not have to live in fear, and those who make these threats should not be able to avoid the consequences of their actions. SB 796 takes a necessary and important step towards making our communities safer."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "Making a criminal threat (in any setting) is conduct that is already covered by the Penal Code in Section 422. Nearly all of the conduct described in this bill falls well within the

definition of that section. For the most part, this bill is unnecessary even to achieve its stated aims.

"To the extent that SB 796 loosens the restrictions of Section 422, it is even more concerning. Penal Code Section 422 is a statute that is often misused to penalize conduct that does not truly belong in the criminal justice system. This is particularly true for our clients with mental health conditions, who often suffer from crippling paranoia and delusions. The fear these clients experience can lead them to say things that are easily misinterpreted or are simply a product of their illness.

"SB 796 is a similar bill to SB 522 and AB 907, which respectively failed to pass out of the Senate Public Safety Committee in the previous legislative session and AB 907 which was held in Senate Appropriations in 2019. Penal Code Section 422 is a statute that requires only words – no actions in furtherance of the threat – and it applies even if the person who is saying the words has 'no intent of actually carrying it out.' Creating a new offense that loosens this already expansive definition will, we fear, only ensnare more people with mental health conditions in the criminal justice system. We are certainly sympathetic to the intent behind this bill, but creating a new crime is not the answer, and it will end up causing more harm than it prevents.

7) **Prior Legislation**:

a) AB 907 (Grayson), of the 2019-2020 Legislative Session, was identical to this bill. AB 907 was held in the Senate Appropriations Committee.

b) AB 2768 (Melendez), of the 2017-2018 Legislative Session, was similar to AB 907 (Grayson). AB 2768 was held in the Assembly Appropriations Committee.

c) SB 110 (Fuller), of the 2015-2016 Legislative Session, would have made it an alternate felony-misdemeanor offense for any person to willfully threaten unlawful violence that will result in death or great bodily injury to occur on the grounds of a school, as defined, where the threat creates a disruption at the school. SB 110 was vetoed by the Governor.

d) SB 456 (Block), of the 2015-2016 Legislative Session, would have specified that any person who threatens to discharge a firearm on the campus of a school, as defined, or location where a school-sponsored event is or will be taking place, is guilty of an alternate felony-misdemeanor. SB 456 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-defamation League
California Association of Joint Powers Authorities
California District Attorneys Association
California Police Chiefs Association
California School Employees Association
California State Sheriffs' Association
California Teachers Association

Giffords Law Center to Prevent Gun Violence
Hindu American Foundation, INC.
National Asian Pacific Islander Prosecutors Association
San Diego County District Attorney's Office
San Francisco District Attorney Brooke Jenkins
Santa Clara County District Attorney's Office
Visalia; City of
Whittier; City of

Opposition

California Public Defenders Association
San Francisco Public Defender

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