Date of Hearing: March 14, 2023
Counsel: Mureed Rasool

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

AB 443 (Jackson) – As Introduced February 6, 2023

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to establish a definition of biased conduct and to develop guidance for law enforcement agencies when screening applicant social media accounts for bias. Specifically, **this bill**:

1) Requires that POST establish a definition for biased conduct that, at a minimum, includes all of the following:

   a) Biased conduct includes conduct resulting from implicit and explicit biases;

   b) Conduct is biased if a reasonable person would conclude so using the facts at hand;

   c) An officer need not admit biased or prejudiced intent for conduct to reasonably appear biased; and,

   d) Biased conduct may occur in an encounter with the public, employees of criminal justice agencies, or online.

2) States that law enforcement agencies must use POST's definition of bias for peace officer decertification purposes and in other specified circumstances.

3) Requires POST to develop "best-practices" guidance for law enforcement agencies when they screen applicant social media accounts for bias.

4) States that these provisions would become operative on January 1, 2026.

EXISTING LAW:

1) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)

2) Requires each class of public officers or employees declared by law to be peace officers to meet minimum standards, including that they be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation that might adversely affect the exercise of the powers of a peace officer. (Gov. Code, § 1031, subd. (f).)

3) States that POST must review and update their regulations and associated screening material to include identification of explicit and implicit bias towards race, ethnicity, gender, nationality, religion, disability, or sexual orientation. (Pen. Code, § 1031.3.)

4) Mandates the course of basic training for peace officers include adequate instruction on racial, identity, and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial, identity, and cultural groups. In developing the training, POST shall consult with appropriate groups and individuals having an interest and expertise in the field of racial, identity, and cultural awareness and diversity. (Pen. Code, § 13519.4 (b).)

5) Provides that a peace officer may have their certification suspended or revoked if they have engaged in serious misconduct, which includes demonstrating bias on the basis of race, religion, or other specified categories. (Pen. Code, § 13510.8.)

6) States that peace officer personnel records are confidential except records related to use-of-force cases involving death or great bodily injury, sustained findings of sexual assault, and sustained findings of discrimination, among other things. (Pen. Code, § 832.7.)

7) Requires law enforcement agencies to report to POST any complaints, charges, or allegations that could lead to decertification. (Pen. Code, § 13510.9.)

8) States that a law enforcement officer exhibiting bias or animus towards a defendant because of their race, ethnicity, or national origin may be grounds to declare a mistrial, dismiss charges, or vacate a sentence, as specified. (Pen. Code, § 745, subd. (e).)

9) Defines "bias motivation" for purposes of adopting law enforcement hate crimes policy as a preexisting negative attitude toward actual or perceived characteristics such as disability, gender, race, religion, and other enumerated traits. (Pen. Code, § 422.87.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's work to elevate the conduct of our law enforcement professionals and protect our citizens is not over. That is why this bill requires all of California's POST certified peace officers to follow the same definition of "biased conduct". It is essential that in the most progressive and diverse state ensures that peace officers are held to the same standard of conducting themselves free of bias without out room for interpretation.

   "Every person in California should have confidence that any contact with a peace officer is based on the need for service or intervention. But most importantly, they should be sure that their contact with any officer is free from fear that bias might dictate the level of professionalism and service they receive.

   "In April of 2022, the State Auditor released a report asking for the Legislature to adopt this simple change, but it should not have taken a state audit to arrive at this conclusion. AB 443

is another step to ensuring that Californians receive the level of service and justice they deserve."

2) **State Auditor Report on Peace Officer Bias**: In 2022, the California State Auditor's Office (State Auditor) audited five law enforcement departments (including LA Sheriff, San Jose Police Department, and the California Department of Rehabilitation and Corrections (CDCR)) for peace officer bias, and uncovered a number of bias-related issues. (State Auditor. *Law Enforcement Departments Have Not Adequately Guarded Against Biased Conduct*. (Apr. 2022) <https://www.auditor.ca.gov/reports/2021-105/index.html> [as of Mar. 8, 2023] at p. iii.) As part of the audit, the State Auditor reviewed a selection of five internal investigations at each department, reviewed the public social media accounts of approximately 450 officers, and examined agency responses to incidents and allegations of biased conduct.

   The report defined bias in general as a lack of objectivity that can take the form of preconceived judgments, opinions, or attitudes about a person or group based on actual or perceived identity characteristics. (*Id.* at 13.) Using this general definition of bias, the State Auditor identified numerous occasions of explicit or implicit bias and the corresponding disciplinary actions. (*Id.* at 19.)

   One of these instances included an officer filming black incarcerated individuals and narrating, "Black Lives Matter;" he later explained he was sarcastically responding to their sagging pants. (*Id.* at 20.) That officer received a temporary pay reduction. (*Ibid.*) In another instance, an officer admitted to teasing incarcerated black youth about watermelon and chicken, and also admitted to teasing them about their clothing, asking them if they were homosexual. (*Ibid.*) That officer, as part of a broader investigation into other matters, was given an unpaid suspension and was required to take training. (*Ibid.*) A third officer told investigators he shared a joke with one or two coworkers about taking a biology exam, being asked to name something commonly found in a cell, and being told that "Mexicans" was apparently an incorrect answer. (*Ibid.*) That officer retired during the investigation. (*Ibid.*)

   Biased behavior was also found to be displayed on social media. (*Id.* at 24.)

Figure 5
Examples of Biased or Prejudiced Statements Peace Officers Made on Social Media

(*Id.* at 24.)

The State Auditor pointed out that although the biased conduct they found was generated by a small number of officers at each department, concluding that bias is not a significant problem on that basis alone would be incorrect for a number of reasons. (*Id.* at 25.) Their review was not designed to catalogue every instance of biased conduct, their work only encompassed a limited number of internal investigations and publicly shared views by a selection of officers. (*Ibid.*) Furthermore, because they found that the departments they reviewed did not have strong safeguards against bias in place, there is a high risk of departments being unaware of and unable to effectively address the ways in which officers exhibit bias. (*Ibid.*)

Among the numerous other suggestions the State Auditor made, one was to establish a definition of bias with certain elements that should be taken into account. (*Id.* at 6.) The State Auditor also listed out questions that law enforcement could consider when determining if conduct was based on bias such as:

- Did the officer make statements that reasonably appeared to be related to an individual's identity characteristic(s), including coded language or other statements more subtle than slurs?

- Did the officer make statements or take actions that invoked any stereotypes related to identity characteristics?
- Did the officer use or promote any symbols, objects, or gestures that could imply bias or prejudice against certain groups of people?
- Does the officer have different identity characteristic(s) than those in question?
- Would the officer have behaved the same way in a similar situation involving a person with different identity characteristic(s)?
- Did the subject(s) and/or other witnesses perceive the officer's conduct as biased?
- Did the officer provide a reasonable explanation for the conduct that takes into account the full circumstances and is not an after-the-fact rationalization?
- Are there any other facts or contextual elements that suggest the officer may have engaged in conduct that was influenced by a person's identity characteristics?

(*Id.* at 72.)

This bill would require POST to create a definition of bias, and requires that any definition POST creates include the elements of bias that the State Auditor suggested. This bill would also require that the definition POST establishes be used by law enforcement agencies when investigating claims of bias, including instances where a peace officer may be decertified for exhibiting bias. (Pen. Code, § 13510.8, subd. (b)(5).) By doing so, it would provide clearer guidelines to assist investigations of bias.

Furthermore, this bill would also require POST to develop a "best practices" guideline for law enforcement agencies when they screen applicant social media profiles for bias. Creating such a guideline would assist on the front end by helping to comb out potentially biased peace officer applicants before they would be released into the community with police powers.

3) **Argument in Support**: According to the *California Public Defenders Association*, "Bias, both implicit and explicit, has undeniably plagued the criminal justice system and resulted in immeasurable injustice to affected individuals. We all are confronted with the ongoing effects of bias in the criminal justice system on a daily if not hourly bias when we see the latest new coverage or research article of some aspect of racial profiling, "biased conduct," and/or implicitly biased discrimination. The negative effects of bias within the criminal justice arena are so profound that they have, in many ways, had severely negative multi-generational effects on communities and families, not only in how they view and/or distrust the criminal justice system, but also in preventing those affected communities and families from thriving. In fact the damaging effects of bias are so dire that bias has been declared a 'public health crisis' by local governments in California.

"AB 443 is a necessary step to mitigate the existence of bias in our criminal justice system. Any meaningful interdiction of bias in the criminal justice system must start with law enforcement who are sworn to serve and protect the community. It is crucial that biased individuals are not hired as law enforcement officers. Additionally, there must be a mechanism to investigate, oversee and terminate individuals who engage in biased conduct while serving as law enforcement officers.

"AB 443 provides an important tool in the long battle to prevent bias and remediate some of

the bias that already exists within the criminal justice arena. By providing a definition of "biased conduct" and requiring agencies to use the operative definition in any investigation or complaint about an allegation of bias or racial profiling, AB 443 provides an initial framework, consistent language for describing the problem and mandates that framework be utilized…"

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

5) **Related Legislation**: SB 11 (Menjivar), requires, among other things, that the California State University system implement implicit bias training for their telehealth mental health providers. SB 11 is pending hearing in the Senate Education Committee.

6) **Prior Legislation**:

   a) AB 2547 (Nazarian), was substantially similar to this bill . AB 2547 was held in the Senate Appropriations Committee.

   b) SB 2 (Bradford), Chapter 409, Statutes of 2021, requires that peace officer lose their certification if they commit certain acts, including engaging in discrimination, as specified.

   c) AB 846 (Burke), Chapter 322, Statutes of 2020, requires that POST review and update regulations and screening materials to ensure identification of implicit and explicit biases towards specified characteristics.

   d) AB 243 (Kamlager), of the 2019-2020 Legislative Session, would have required peace officers to complete a refresher training every two years on racial, identity, and cultural trends. AB 243 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)

Opposition

Peace Officers Research Association of California (PORAC)

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

Date of Hearing: March 14, 2023
Counsel: Andrew Ironside

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

AB 449 (Ting) – As Introduced February 6, 2023

SUMMARY: Requires any state or local law enforcement agencies to adopt a hate crime policy by July 1, 2024, and to report to that policy to Department of Justice (DOJ). Also requires the Commission on Peace Officer Standards and Training (POST) to update its model hate crimes policy framework. Specifically, **this bill**:

1) Makes the adoption of a hate crimes policy by local law enforcement agencies mandatory rather than permissive, and extends the requirement to include state law enforcement agencies.

2) Requires state and local law enforcement agencies to adopt a hate crimes policy, as specified, by July 1, 2024.

3) Adds that the hate crimes policy adopted by a state and local law enforcement agency must include the POST supplemental hate crime report, and a schedule of POST's required hate crime training, as specified, and any other hate crime or related training the state or local law enforcement agency may conduct.

4) Extends to state law enforcement agencies the requirement to report to the DOJ, in a manner as prescribed and directed by the Attorney General, any information that may be required relative to hate crimes.

5) Requires, in 2024 and in any year thereafter that the Attorney General requires, state and local law enforcement agencies to report the formal policies on hate crimes adopted by the agencies, as required.

6) Requires DOJ to select a sample of policies and brochures from among those that law enforcement agencies submit for review.

7) Requires the sample to include all of the following:

    a) Several policies and brochures from agencies that employ the business that the largest number of law enforcement agencies in the state employ to develop their policies;

    b) All policies and brochures from agencies that habitually report no hate crimes;

    c) All policies and brochures from large agencies that develop their own policies if an initial department examination of their hate crime policies reveals any noncompliance with legal requirements.

8) Requires DOJ to review the sample of policies and brochures for compliance with the law.

9) Require DOJ to instruct any agency that submitted no policy or brochure, or that submitted a legally noncompliance policy or brochure, to submit compliant documents.

10) Requires DOJ, in its annual update to the OpenJusice Web portal, to include the names of agencies that submitted compliant policies and brochures, including any agency that submitted revised compliant documents.

11) Requires POST to consult with subject matter experts, as specified, when updating the guidelines or course of instruction for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes.

12) Provides that the guidelines and course of instruction POST develops are not regulations under the Administrative Procedures Act.

13) Requires guidelines developed by POST to include a model hate crimes policy framework for use by law enforcement agencies in adopting a hate crimes policy, as specified.

14) Adds to the required elements for POST's model hate crime policy framework the requirements for hate crime policies developed by state and local law enforcement agencies, as specified.

EXISTING LAW:

1) Defines "hate crime" as a 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; or

   g) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a)(1)-(7).)

2) Provides that all state and local agencies shall use the definition of "hate crime" stated above except as other explicit provisions of state or federal law may require otherwise. (Pen. Code, § 422.9.)

3) Specifies "hate crimes" include, but are 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, subd. (b). & 422.6., subd. (a) and (b).)

4) Authorizes each state law enforcement agency to adopt a hate crime policy. (Pen. Code, § 422.87, subd. (a).)

5) Provides that when a local law enforcement agency updates an existing hate crimes policy or adopts a new hate crimes policy, the policy must include, but is not limited to, all of the following:

   a) Definitions of hate crimes and associated terms;

   b) The content of the model policy framework developed by POST, as specified;

   c) Information regarding "bias motivation," including disability-bias and religion bias, as specified;

   d) Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes and a plan for the agency to remedy this underreporting;

   e) A protocol for reporting suspected hate crimes to the DOJ, as specified;

   f) A checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving the victims and any interested persons the agency's hate crimes brochure;

   g) A specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed;

   h) The title or titles of the officer or officers responsible for ensuring that the department has a hate crime brochure and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons; and,

   i) A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility. (Pen. Code, § 422.87, subd. (a).)

6) Requires local law enforcement agencies, upon adequate funding, to report to the DOJ in a manner prescribed by the Attorney General (AG) any information relative to hate crimes. (Pen. Code, § 13023, subd. (a).)

7) Requires DOJ, on or before July 1st of each year, to update the OpenJustice Web portal with information obtained from local law enforcement agencies regarding hate crimes. (Pen. Code, § 13023, subd. (b).)

8) Requires POST, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, academic experts, and the DOJ, to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

9) Requires the POST course to include instruction in each of the following:

   a) Indicators of hate crimes;

   b) The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims;

   c) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;

   d) Law enforcement procedures, reporting, and documentation of hate crimes;

   e) Techniques and methods to handle incidents of hate crimes in a non-combative manner;

   f) Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness;

   g) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems; and,

   h) Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the AG determines are likely. (Pen. Code, § 13519.6, subd. (b).)

10) Requires POST guidelines to include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. (Pen. Code, § 13519.6, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Unbelievably, California does not require law enforcement agencies to have a hate crimes policy. As we have seen the Asian Pacific

Islander American community faced a major surge in violence and harassment solely based on their race, we must have guidelines that allow for consistent response by law enforcement across the State. AB 1947 would resolve this issue by requiring all California law enforcement agencies to adopt a hate crimes policy and follow specific guidelines."

2) **Hate Crimes and Reporting**: The DOJ is required to report hate crime statistics on their website by July 1st of each year. The DOJ sources the report with data from local law enforcement agencies, which the DOJ receives on a monthly basis. Monthly reporting is required to comply with federal standards imposed by the Federal Bureau of Investigation (FBI).

   Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the DOJ reported hate crime events increased 31.0 percent from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9 percent from 1,261 in 2019 to 1,563 in 2020. (DOJ, Hate Crime in California 2020 <https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/Hate%20Crime%20In%20CA%202020.pdf> [as of Feb. 28, 2022].) According to DOJ's 2021 report on hate crimes, "hate crime events" reported to law enforcement "increased 32.6 percent from 1,330 in 2020 to 1,763 in 2021," and "hate crime offense increased 42.1 percent from 1,563 in 2020 to 2,221 in 2021." (DOJ, Hate Crime in California 2021 <https://oag.ca.gov/system/files/attachments/press-docs/Hate Crime In CA 2021 FINAL.pdf> [last visited Mar. 7, 2023].) Specifically, the DOJ found that "[v]iolent [hate] crime offenses increased 47.4 percent from 1,088 in 2020 to 1,604 in 2021." (*Ibid.*)

   Yet, hate crimes are still underreported by law enforcement. A 2018 report by the California State Auditor found that law enforcement had not taken sufficient action to identify, report, and respond to hate crimes. According to the report, "Officers at…law enforcement agencies might have been better equipped to identify hate crimes if their agencies had implement better methods for doing so and provided periodic training." (California State Auditor, *Hate Crimes in California* (May 2018) at p. 2 <https://www.auditor.ca.gov/pdfs/reports/2017-131.pdf> [last visited Mar. 15, 2022]) It added, "At local law enforcement agencies we reviewed, a lack of hate crime training and protocols, in addition to little proactive guidance and oversight from DOJ, have contributed to the underreporting of hate crimes." (*Id.* at 26.)

   Current law authorizes law enforcement agencies to adopt a hate crimes policy, but it does not require one. This bill, among other things, would require all state and local law enforcement agencies to adopt such a policy. It would also require POST to create a model hate crimes policy framework for local law enforcement agencies to adopt and/or work from. And, this bill would require state and local law enforcement agencies, beginning in 2024 and in any year thereafter as required by the Attorney General, to report to DOJ the formal policies on hate crimes adopted by the agencies.

3) **The Toll of Hate Crimes on Victims:** Hate crimes severely impact victims. The emotional effect can be significant, with victims experiencing "more psychological distress than victims of other violent crimes." (*Id.* at p. 11.) Experts have observed that "[e]xperiences of hate are associated with poor emotional well-being such as feelings of anger, shame, and fear. Moreover, victims tend to experience poor mental health, including depression, anxiety, posttraumatic stress, and suicidal behavior." (Cramer et al., *Hate-Motivated Behavior: Impacts, Risk Factors, and Interventions*, Health Affairs (Nov. 9, 2020)

<https://www.healthaffairs.org/do/10.1377/hpb20200929.601434/> [last visited Mar. 8, 2023].) The physical health of victims also suffers. The "impacts include poor overall physical health, physical injury, stress, and difficulty accessing medical care." (Cramer et al., *supra.*)

Hate crimes also impact the victim's community. According to the California State Auditor, "[T]hese crimes likely had a significant impact on the groups to which victims belonged… [by] communicat[ing] to members of the victims' groups that they are unwelcome and unsafe in their communities." (California State Auditor, *supra*, at p. 11; see e.g., Brown et al., *How hate crime affects a whole community*, BBC (Jan. 12, 2018) <https://www.bbc.com/news/uk-42622767> [last visited Mar. 8, 2023].) Indeed, "Entire communities can feel the impacts of victimization. Members of the targeted community may experience vicarious trauma symptoms resulting from witnessing others being victimized. In addition, a review of structural discrimination shows that for a targeted vulnerable group, long-standing, systemic inequalities can be seen in economic, housing, and educational disparities." (Cramer et al., *supra.*)

4) **Argument in Support**: According to the *California Alliance for Retired Americans*: "The pandemic has served as a catalyst: expediting transformative innovation to revolutionize public service (distance learning, telehealth, etc.) while also exacerbating disparities across the intersectional spectrum. As our nation and state have struggled to combat rising hate crimes since 2015, the pandemic, coupled with the hyper polarization of xenophobic and racist policies espoused by the previous federal administration, have fueled, in part, the massive rise of hate crimes against seniors, BIPOC, and LGBTQIA individuals and communities, especially our AAPI family, and all marginalized groups. As a grassroots senior and disability advocacy organization, our members have firsthand experience with incidents of hate, and what is more disconcerting is the dramatic underreporting of such incidents - as stated by the California State Auditor.

"With the rise of extremist activity over the last six years now surging through the pandemic by disproportionately targeting our senior, AAPI, BIPOC, Jewish and LGBTQIA communities - California is in dire need of immediate action. AB 449 will equip our law enforcement agencies with the tools and training to be more effective identifying, responding to, and reporting hate crimes. Additionally, the Department of Justice will be tasked with ensuring each law enforcement agencies' hate crime policies, brochures and training schedules remain in compliance with this new law.

"Affording Seniors viable resources to age with grace, dignity and independence - such as protecting our personal safety and reducing the likelihood of hate crimes - not only represent CARA's foundational principles but we believe will ensure a safer, more accessible and inclusive California for our aging community; AB 449 (Ting) codifies these aspirations into law by enhancing the safety of our Seniors, marginalized communities and all Californians."

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "As currently written, this bill would require all state and local law enforcement agencies to adopt a hate crimes policy, including the content of the model policy framework developed by the Commission on Peace Officer Standards and Training (POST). It would also require all state and local law enforcement agencies to complete specified reporting to the Department of Justice.

"Existing law provides that local law enforcement agencies may adopt a hate crimes policy, and that agencies that develop such a policy or update an existing policy must follow the POST framework. This flexibility allows specialized law enforcement agencies that do not respond to hate crimes or hate incidents (coroner's offices, welfare fraud investigations agencies, arson investigation units, and district attorney bureaus of investigation) to opt-out.

"Under AB 449, the aforementioned agencies, with the addition of many specialized state law enforcement agencies (Alcoholic Beverage Control, Contractors State Licensing Board Investigations, Horse Racing Board Investigations, etc.) would be required to implement a policy framework that is clearly and solely applicable only to law enforcement first-response agencies that are responsible for investigating hate crimes. Not only would that put an unnecessary operational burden on these agencies, it would do a disservice to victims by causing duplication of investigative steps and confusion around the process of reporting hate crimes.

"We would remove our opposition to AB 449 if it included a narrower definition of "state and local law enforcement agency" that restricted the application of the POST framework to agencies tasked with responding to and investigating hate crimes and hate incidents. (For reference, California Penal Code § 13519 (b) contains a definition that identifies specific law enforcement officers required to take specialized training in the handling of domestic violence complaints.)"

6) **Related Legislation**:

   a) AB 644 (Jones-Sawyer), would require public postsecondary educational institutions to, among other things, develop survey questions with student participation to determine student perspectives on campus climate related to hate crimes and, if a campus already has a survey, to meet as specified to review an update the survey. AB 644 is currently pending in the Higher Education Committee.

   b) AB 1064 (Low), would define "bias against" as a preexisting negative attitude toward actual or perceived characteristics of a person, and states that bias motivation may include, among other things, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, and thrill-seeking. AB 1064 is currently pending referral in the Assembly Rules Committee.

7) **Prior Legislation**:

   a) AB 1947 (Ting), of the 2021-2022 Legislative Session, would have required each local law enforcement agency to adopt a hate crimes policy with specific parameters and requires the Commission on Peace Officers Standards and Training (POST) to develop a model hate crimes policy. AB 1947 was held on the Senate inactive file.

   b) AB 485 (Nguyen), Chapter 852, Statutes of 2022, requires local law enforcement agencies to post information relative to hate crimes on their internet websites on a monthly basis.

c) AB 2282 (Bauer-Kahan), Chapter 397, Statutes of 2022, expands existing hate crimes offenses to include specified conduct on the premises of public properties and increase the associated fines imposed for committing such offenses.

d) AB 300 (Chu), of the 2019-2020 Legislative Session, would have required a law enforcement agency to indicate in an incident report if the underlying incident is a "hate crime" or "hate incident." AB 300 was held in the Senate Appropriations Committee.

e) AB 301 (Chu), of the 2019-2020 Legislative Session, would have required the DOJ to carry out various duties related to documenting and responding to hate crimes. AB 301 was held in the Assembly Appropriations Committee.

f) AB 2879 (Chu), of the 2019-2020 Legislative Session, would have required a law enforcement agency to complete a supplemental hate crime or hate incident report form for each suspected hate crime or hate incident. AB 2869 was never heard in this Committee.

g) SB 1165 (Jones), of the 2019-2020 Legislative Session, would have required law enforcement agencies, when collecting data on hate crimes, to additionally collect the ZIP Code of where the hate crime took place. SB 1165 was never heard in committee.

h) AB 39 (Bocanegra), of the 2017-2018 Legislative Session, would have required local law enforcement agencies to forward a summary of any hate crime to the human relations commission in their jurisdiction. AB 39 was held in the Assembly Appropriations Committee.

i) AB 1985 (Ting), Chapter 26, Statutes of 2018, requires local law enforcement agencies to include certain requirements and definitions into a hate crimes policy manual if they decide to adopt or update one.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Law Alliance
California Alliance for Retired Americans
California Asian Pacific American Bar Association
California Church Impact
California League of United Latin American Citizens
Center for The Study of Hate & Extremism - California State University, San Bernardino
Dear Community
Feminist Majority
Hindu American Foundation, INC.
Japanese American Citizens League, Northern California-w. Nevada-pacific District
Sikh Coalition
Stand With Asians
The Arc and United Cerebral Palsy California Collaboration
Anti-Defamation League

California Community Living Network
California-hawaii State Conference of The NAACP
Coalition for Humane Immigrant Rights (CHIRLA)
Delta Chinatown Initiative
Disability Rights California
Japanese American Citizens League - San Jose Chapter
National Asian Pacific American Bar Association
Pathpoint
Sikh American Legal Defense and Education Fund (SALDEF)
Stand With Asian Americans

1 Private Individual

Opposition

California District Attorneys Association

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

Date of Hearing: March 14, 2023
Counsel: Andrew Ironside

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

AB 462 (Ramos) – As Amended March 2, 2023

SUMMARY: Establishes the Overdose Response Team Fund within the State Treasury, to be administered by the Board of State and Community Corrections (BSCC), for grants to fund efforts by county sheriffs' departments to establish overdose response teams to investigate fatal overdoses. Specifically, **this bill**:

1) Establishes in the State Treasury the Overdose Response Team Fund.

2) Provides that moneys in the fund become available upon appropriation by the Legislature for overdose response teams.

3) Requires BSCC to administer overdose response team grants from the fund, upon appropriation by the Legislature, to county sheriffs' departments' task forces established for overdose response.

4) Requires BSCC to give preference to existing overdose response teams, including, but not limited to, the San Bernardino County Sheriff's Overdoes Response Team.

5) Authorizes sheriffs' department receiving funds to, until January 1, 2029, create pilot programs establishing and implementing overdose response teams to combat the ongoing opioid crisis in local communities.

6) Requires overdose response teams to respond to and investigate fatal overdose deaths.

7) Permits overdose response teams to respond to and investigate nonfatal overdoses, including those involving juveniles and multiple victims.

8) Requires a pilot program to collect all of the following statistics:

    a) The number of peace officers assigned to the overdose response team, and any changes to the number of peace officers assigned to the overdose response team;

    b) The number of fatal overdoses investigated by the overdose response team;

    c) The number of nonfatal overdoses investigated by the overdose response team;

    d) The number of arrests for specified drug trafficking offenses resulting from overdose response team investigations;

e) The amount of fentanyl and opioids seized as a result of investigations by the overdose response team;

f) The number of units of opioid antagonists approved by the United States Food and Drug Administration administered, distributed, or recovered at each overdose scene; and,

g) Any additional data that is relevant and appropriate to describe the activities conducted under the pilot program.

9) Requires counties receiving funds to send a report on July 1, 2025, and on July 1 each year thereafter, to the Assembly Committee on Public Safety containing the collected statistics, as specified.

10) Sunsets the Overdose Response Team Fund on January 1, 2030.

EXISTING LAW:

1) Establishes the BSCC. (Pen. Code, § 6024, subd. (a).)

2) Requires the BSCC to do the following, among other things:

a) Develop recommendations for the improvement of criminal justice and delinquency and gang prevention activity throughout the state;

b) Identify, promote, and provide technical assistance relating to evidence-based programs, practices, and promising and innovative projects consistent with the mission of the board;

c) Receive and disburse federal funds, and perform all necessary and appropriate services in the performance of its duties as established by federal acts;

d) Develop procedures to ensure that applications for grants are processed fairly, efficiently, and in a manner consistent with the mission of the board;

e) Identify delinquency and gang intervention and prevention grants that have the same or similar program purpose, are allocated to the same entities, serve the same target populations, and have the same desired outcomes for the purpose of consolidating grant funds and programs and moving toward a unified single delinquency intervention and prevention grant application process in adherence with all applicable federal guidelines and mandates;

f) Cooperate with and render technical assistance to the Legislature, state agencies, local governments, or other public or private agencies, organizations, or institutions in matters relating to criminal justice and delinquency prevention;

g) Develop incentives for units of local government to develop comprehensive regional partnerships whereby adjacent jurisdictions pool grant funds in order to deliver services, to a broader target population and maximize the impact of state funds at the local level;

h) Conduct evaluation studies of the programs and activities assisted by the federal acts; and,

i) Identify and evaluate state, local, and federal gang and youth violence suppression, intervention, and prevention programs and strategies, along with funding for those efforts. (Pen. Code, § 6027, subd. (b).)

3) Provides that a person who possesses specified controlled substances for sale or purchases specified controlled substances for purposes of sale shall be punished by imprisonment in county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

4) Provides that a person who sells or transports specified controlled substances, or offers to do so, unless upon a written prescription, as specified, shall be punished by imprisonment in county jail for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)

5) Provides that a person who transports specified controlled substances within this state from one county to another noncontiguous county shall be punished by imprisonment in county jail for three, six, or nine years. (Health & Saf. Code, § 11352, subd. (b).)

6) Provides that a person 18 years of age or older who voluntarily solicits, induces, encourages, or intimidates any minor to violate specified drug offenses shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)

7) Provides that a person 18 years of age or older who hires, employs, or uses a minor to unlawfully traffic a controlled substance, as specified, shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)

8) Specifies that it is a felony to manufacture specified controlled substances, including fentanyl, and makes that conduct punishable by imprisonment for three, five, or seven years in the county jail. (Health & Saf. Code, § 11379.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Fentanyl overdose deaths have not been thoroughly investigated by law enforcement, leading to unsolved cases and families languishing for closure. Additionally, law enforcement is unable to locate and determine the source of the fentanyl, leading to more potential fatal overdoses. This bill would help solve both these issues allowing the state to create a pilot program giving law enforcement the tools to solve these cases and bring closure."

2) **BSCC Grant Administration:** Established in 2012, the BSCC is an independent agency that provides leadership to the adult and juvenile criminal justice systems, expertise on Public Safety Realignment issues, acts as a data and information clearinghouse, and provides technical assistance on a wide range of community corrections issues. The BSCC also promulgates regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities, develops standards for the selection and training of local

corrections and probation officers. The BSCC also administers significant public safety-related grant funding. (https://www.bscc.ca.gov/m_bsccboard/; see also Pen. Code, §§ 6024-6025 & 6030-6031.)

This bill would require the BSCC to establish a grant program to provide funding for county sheriffs' departments to create overdose response teams to address rising overdose rates in their communities. The Corrections Planning and Grant Programs Division of the BSCC is responsible for administering state and federal grant programs to community-based organizations, tribes, and local governments, including grant programs financing public safety initiatives. (BSCC, Corrections Planning and Grant Programs <https://www.bscc.ca.gov/s_correctionsplanningandprograms/> [last viewed Mar. 24, 2022].) BSCC administers grant programs like the one contemplated by this bill.

3) **Drug Overdoses in California:** In California, the number of deaths involving opioids, and fentanyl in particular, has increased significantly over the course of the last decade. Between 2012 and 2018, opioid-related overdose deaths increased by 42%; fentanyl overdose deaths increased by more than 800%—from 82 to 786. (CDPH, Overdose Prevention Initiative <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx?msclkid=99f1af92b9e411ec97e3e1fe58cde884> [last viewed Mar. 7, 2023].) In 2021, there were 21,016 emergency room visits resulting from an opioid overdose, 7,176 opioid-related overdose deaths, and 5,961 overdose deaths from fentanyl. (CDPH, California Overdose Surveillance Dashboard < https://skylab.cdph.ca.gov/ODdash/?tab=Home> [last visited Mar. 7, 2023].).

4) **Argument in Support**: According to the *San Bernardino County Sheriff's Department*, "In recent years, Fentanyl, a powerful, cheaply produced synthetic opioid, has flooded the illicit drug market. Due to the strength of Fentanyl, determining dose size is notoriously difficult for users, leading to an increase in the likelihood of an overdose. There have been many notable cases of individuals purchasing substances believing them to be cocaine, methamphetamine, or a prescription pill, only for that substance to be laced with a dangerous quantity of Fentanyl that the user knowingly ingests.

"AB 462 would create overdose response teams within Sheriff's Departments to investigate fentanyl-related fatal and nonfatal overdoees involving juveniles and multiple victims. These teams would collect evidence for potential criminal activity. The passage of AB 462 would ensure that law enforcement thoroughly investigated overdose deaths and eliminate concerns from victims' parents and family members."

5) **Argument in Opposition**: According to *Initiate Justice*: "It has become evident that a criminal justice response to drugs and drug use has not only perpetrated racial disparities in the legal system but also contributed to the unprecedented overdose crisis impacting jurisdictions across the state. Specifically, it's due to the prioritization of the enforcement of punitive drug policies as well as arrests and incarceration that we now find ourselves ill equipped to properly respond to the overdose crisis.

"**Need for a Public Health Led Approach**

"With the state facing a budget deficit, it's important to invest in responses that have proven to save lives and connect people to life affirming services. Any strategies and ideas aimed at

reducing the negative consequences of drugs and drug use must be guided by science and evidence. AB 462 seeks to prioritize funding for Sheriff Departments to establish overdose response teams. We strongly believe that the state's response to the overdose crisis must be guided by a public health approach and investments must be made to community-based health organizations as opposed to law enforcement entities. A more effective approach would be to fund syringe service programs (SSPs), providers at these programs have been on the forefront of this overdose crisis ensuring that people have adequate access to Naloxone, overdose prevention education, and equipment to keep themselves and their peers safe. These are trusted messengers that have proven to reach vulnerable community members, in a culturally and linguistic manner, something that is essential for the communities currently impacted by the alarming overdose rates.

"According to a recent report over 9,462 Californians died from a drug related overdose from June 2020 to June 2021. The infiltration of fentanyl in the drug supply has led to a dramatic spike in accidental overdose, in 2021 alone 5,722 Californians lost their life to a fentanyl related overdose. However, these deaths could have been prevented had people been given access to harm reduction tools such as drug testing, naloxone, and access to overdose prevention centers. With a contaminated drug supply, the urgency to strengthen a public health response rooted in community and health system settings is needed now more than ever. For instance, an analysis on the impact of the California Harm Reduction Initiative released early this year demonstrates that the state funding provided to syringe service programs has improved their ability to distribute naloxone, fentanyl test strips, and offer buprenorphine to their participants, either through in- person consultations or telemedicine. A much smarter and effective investment would be for the state to fund these programs and strengthen their infrastructure to continue serving the most vulnerable people in our communities."

6) **Related Legislation**:

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

   b) AB 695 (Pacheco), would establish the Juvenile Detention Facilities Improvement Grant Program, to be administered by BSCC, to address the inadequate and dilapidated state of county juvenile detention facilities. AB 695 is currently pending in this committee.

   c) AB 862 (Bauer-Kahan), would require county sheriffs to compile and submit data to the BSCC. AB 862 is currently pending in this committee.

   d) AB 898 (Lackey), would require every juvenile probation department to annually report to the BSCC all injuries to juvenile hall staff resulting from an interaction with a resident. AB 898 is pending hearing in this committee.

7) **Prior Legislation**:

   a) AB 1836 (Maienschein), of the 2021-2022 Legislative Session, would have established the Officer Wellness and Mental Health Grant Program within the BSCC to award funds to local law enforcement agencies and associations to develop wellness and mental health

programing for peace officers. AB 1836 was held in the Senate Appropriations Committee.

b) SB 1418 (Newman), of the 2021-2022 Legislative Session, would have created the Public Safety Collaborative Fund to be administered by the BSCC to regional public safety collaboratives established for the purpose of violence prevention, intervention, and suppression activities. SB 1418 was held in the Assembly Appropriations Committee.

c) AB 2914 (Rivas), of the 2019-2020 Legislative Session, would have established the Mental Health Response and Treatment Challenge Grant Program to be administered by the BSCC. AB 2914 did not receive a hearing in this committee.

d) SB 1112 (Chang), of the 2019-2020 Legislative Session, would have required the BSCC to collect data on police departments and sheriff's departments receiving funds from a proposed $50,000,000 General Fund appropriation allocated for, among other things, codeployment teams for crisis intervention. SB 1112 did not receive a hearing in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Victims of Illicit Drugs INC.
Deputy Sheriffs' Association of Monterey County
Placer County Deputy Sheriffs' Assocation
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department

Opposition

Communities United for Restorative Youth Justice (CURYJ)
Initiate Justice

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

Date of Hearing: March 14, 2023
Counsel: Mureed Rasool

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

AB 467 (Gabriel) – As Introduced February 6, 2023

As Proposed to Be Amended in Committee

SUMMARY: Clarifies that a court that sentenced a defendant and issued a 10 year criminal protective order, may make modifications to it throughout the duration of the order.

EXISTING LAW:

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

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

3) Requires a court to consider issuing up to a 10 year restraining order protecting victims for convictions including, but not limited to domestic violence, certain types of human trafficking, gang activity, statutory rape, pimping of a minor, and offenses requiring sex offender registration. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).)

4) Provides that a post-conviction protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison, or a county jail, or subject to mandatory supervision, or whether the defendant is placed on probation. The duration of a protective order issued by the court should be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and the victim's immediate family. (Pen. Code, § 136.2, subd. (i)(1).)

5) Requires a court to consider issuing up to a 10 year restraining order protecting percipient witness, upon clear and convicing evidence of witness harassment, in cases with convictions including, but not limited to domestic violence, statutory rape, gang activity, and sex registerable offenses. (Pen. Code, § 136.2, subd. (i)(2).)

6) Authorizes a court to place conditions on a 10 year restraining order that can include electronic monitoring for up to one year, as specified. (Pen. Code, § 136.2, subd. (i)(3).)

7) Prohibits a person who is subject to a protective order from owning, possessing, purchasing, attempting to purchase or receive, a firearm while the protective order is in effect, and the court shall order a person subject to the protective order to relinquish ownership or

possession of any firearms. (Pen. Code, § 136.2, subd. (d).)

8) Authorizes courts to issue civil harassment restraining orders, as specified. (Code Civ. Proc. § 527 *et seq.*)

9) Authorizes court to issue domestic violence restraining orders, as specified. (Fam. Code, § 6300 *et seq.*)

10) Punishes an individual for willful disobedience of, among other things, a lawful restraining order. (Pen. Code, §§ 166 & 273.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 467 is a common-sense measure that will change current statute to allow courts to modify the terms of a contact order as long as the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim. In doing so, this bill will not only strengthen protections for victims of domestic violence—who cannot change the order themselves, thereby endangering their safety—but also prevent punitive practices and overly-harsh punishments in our criminal legal system for couples who reconcile and wish to have the order changed."

2) **Protective Orders, Generally**: As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code Section 136.2, subdivision (a)(1), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this portion of the statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

   Specific to domestic violence and offenses requiring sex offender registration, the case file must be clearly marked so that the court is aware of their nature for purposes of considering a protective order. (Pen. Code, § 136.2, subd. (e)(1).) The court has the authority to issue pre- and post-conviction protective orders. (Pen. Code, § 136.2.) When a defendant has been convicted of domestic violence, as defined, and rape, statutory rape, spousal rape, or any crime requiring sex offender registration, the court can issue a protective order lasting up to 10 years. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking and elder abuse cases. (Pen. Code, § 646.9, subd. (k); Pen. Code, § 368(l).)

3) **Criminal Contempt**: Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order." (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

   Criminal contempt under Penal Code Section 166 is a misdemeanor, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968)

70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, *supra*, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt is "entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4t Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

4) **Need for this Bill**: According to background information provided by the author's office, some courts have decided that although Penal Code section 136.2, enables them to issue a 10 year criminal protective order (CPO), the statute does not allow for them to modify the order past the period a defendant is serving their sentence or on probation.

   The Legislature did not expressly state that a court can modify the protective order and so, some courts may feel they are unable to modify the statute because they no longer have jurisdiction over the case. For the courts that do modify the protective orders, they may feel they can do so under their inherent authority as a court. *People v. Municipal Court (Ryan)* (1978) 20 Cal.3d 523, 532 [opining that courts should decline to exercise their inherent powers to achieve a different result which would conflict with legislation]; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550.)

   This bill would clarify that a court is allowed to modify a 10 year protective order throughout the duration of the order. Doing so will provide courts that were hesitant to modify such a protective order greater guidance.

5) **Due Process**: Critics of the bill have pointed out that the bill does not specify any notice requirement or provide for opportunities to be heard. Some California Courts of Appeal have ruled that under some circumstances due process requires a defendant be given notice and opportunity to be heard during a proceeding regarding a criminal protective order. (See *Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 965; *In re Jonathan V.* (2018) 19 Cal.App.5th 236, 242-243.) In both of those cases, the prosecution sought a protective order without previously notifying the defendant, and without presenting evidence that any emergency circumstances existed. Other statutes do outline certain procedural notice and hearing rules. (Code Civ. Proc., § 527 *et seq.*; Fam. Code, § 6300 *et seq.*)

6) **Argument in Support**: According to the *California Partnership to End Domestic Violence*, "A domestic violence restraining order is a court order issued in a domestic violence case that mandates that the accused refrain from harming, threatening, or harassing the victim. The specific terms and conditions of a restraining order will vary from case to case. However, all orders include provisions related to contact between the restrained person and the protected person. The order can either be a 'peaceful contact order' (PCO) or a no contact order (NCO). Victims often seek to modify the terms of the order from PCO to NCO or vice versa.

   "Some courts have determined that if the defendant is no longer serving a sentence or is on probation, they do not have the jurisdiction to modify the order. Similarly, some judges have determined that if the defendant is no longer serving a sentence or on probation, they do not have jurisdiction to modify the order, even if the order is active and both the victim and defendant request it.

"This is detrimental to both victims and defendants. Victims who seek to modify a PCO or NCO cannot change the order, which can endanger their safety. Additionally, couples who reconcile and wish to have a PCO cannot change the order, thereby exposing the defendant to additional criminal protective order violations for consensual contact.

"AB 467 will change the current statute to allow courts to modify the terms of a peaceful contact order or no contact order as long as the court is convince beyond a reasonable doubt that the modification is in the best interest of the victim."

7) **Argument in Opposition**: According to the *California Public Defenders Association*, "CPDA sympathizes with crime victims and understands that modifications to restraining orders may become necessary over time but is concerned that the bill provides no notice requirements or opportunities to be heard by the individuals who are the ones that will be subject to any modifications made to the restraining orders and who will be penalized if they violate the new terms of said orders.

"Moreover, requiring a standard of proof "beyond a reasonable doubt that the modification is in the best interest of the victim" robs victims of their agency by patronizing them. It combines the standard to determine the deprivation of liberty, beyond a reasonable doubt, with the standard for determining child custody 'in the best interest'… "

8) **Related Legislation**:

   a) SB 459 (Rubio), would require a court to modify a specified protective order only if the court is convinced the modification is in the best interest of the protected person. SB 459 is pending hearing in the Senate Judiciary Committee.

   b) SB 741 (Min), would declare legislative intent to prohibit prehearing discovery in hearings governed by the Domestic Violence Prevention Act unless authorized by the court and outlines prehearing discovery rules. SB 741 is pending hearing in the Senate Judiciary Committee.

9) **Prior Legislation**:

   a) SB 352 (Block) Chapter 279, Statutes of 2015, authorized courts to issue a 10 year protective order upon convictions of certain elder abuse offenses.

   b) AB 307 (Campos), Chapter 291, Statutes of 2013, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed.

   c) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving "domestic violence."

   d) AB 289 (Spitzer), Chapter 582, Statutes of 2007, allows courts to issue a protective order for up to 10 years for a conviction stemming from a domestic violence causing corporal

injury conviction.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Catholic Conference
California Partnership to End Domestic Violence
California State Sheriffs' Association
Prosecutors Alliance California
Santa Clara County District Attorney's Office

Opposition

California Public Defenders Association (CPDA)

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

Amended Mock-up for 2023-2024 AB-467 (Gabriel (A))

Mock-up based on Version Number 99 - Introduced 2/6/23
Submitted by: Mureed Rasool, Assembly Public Safety Committee

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

SECTION 1. Section 136.2 of the Penal Code is amended to read:

136.2. (a) (1) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(A) An order issued pursuant to Section 6320 of the Family Code.

(B) An order that a defendant shall not violate any provision of Section 136.1.

(C) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provision of Section 136.1.

(D) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim except through an attorney under reasonable restrictions that the court may impose.

(E) An order calling for a hearing to determine if an order described in subparagraphs (A) to (D), inclusive, should be issued.

(F) (i) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim, witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(ii) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(G) (i) An order protecting a victim or witness of violent crime from all contact by the defendant or contact with the intent to annoy, harass, threaten, or commit acts of violence by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the California Restraining and Protective Order System.

(ii) (I) If a court does not issue an order pursuant to clause (i) when the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, the court, on its own motion, shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(ia) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(ib) The defendant shall relinquish ownership or possession of any firearms pursuant to Section 527.9 of the Code of Civil Procedure.

(II) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(iii) An order issued, modified, extended, or terminated by a court pursuant to this subparagraph shall be issued on forms adopted by the Judicial Council that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not make the order unenforceable.

(iv) A protective order issued under this subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. The electronic monitoring shall not be in place if the protective order is not in place.

(2) For purposes of this subdivision, a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence is a witness and is deemed to have suffered harm within the meaning of paragraph (1).

(b) A person violating an order made pursuant to subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be punished for a substantive offense described in Section 136.1 or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) (A) Notwithstanding subdivision (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in clause (i).

(iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in clause (i).

(B) An emergency protective order that meets the requirements of subparagraph (A) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(2) Except as described in paragraph (1), a no-contact order, as described in Section 6320 of the Family Code, shall have precedence in enforcement over any other restraining or protective order.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish ownership or possession of any firearms pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) When the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, a violation of Section 261,

261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. To facilitate this, the court's records of all criminal cases involving domestic violence, a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, shall be marked to clearly alert the court to this issue.

(2) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been issued, except as described in subdivision (c), a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and the defendant's minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if it is ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of an appropriate criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and the person's children shall provide for the safe exchange of the children and shall not contain language, either printed or handwritten, that violates a "no-contact order" issued by a criminal court.

(2) The safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged and the information provided to the court pursuant to Section 273.75.

(2) When a complaint, information, or indictment charging a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by a civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or former Section 262, a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, any other forms of violence, or a weapons offense.

(i) (1) When a criminal defendant has been convicted of a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of subdivision (a), (b), or (c) of Section 236.1 prohibiting human trafficking, Section 261, 261.5, former Section 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. The order may be modified by the sentencing court in the county in which it was issued throughout the duration of the order. ~~if the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim.~~ It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of a victim and the victim's immediate family.

(2) When a criminal defendant has been convicted of a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a percipient witness to the crime if it can be established by clear and convincing evidence that the witness has been harassed, as defined in paragraph (3) of subdivision (b) of Section 527.6 of the Code of Civil Procedure, by the defendant.

(3) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, "local government" means the county that has jurisdiction over the protective order.

Date of Hearing: March 14, 2023
Counsel: Andrew Ironside

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

AB 479 (Blanca Rubio) – As Introduced February 7, 2023

As Proposed to be Amended in Committee

SUMMARY: Extends the sunset on the program authorizing the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer programs for individuals convicted of domestic violence that do not comply with the batterer's program requirements from July 1, 2023, to July 1, 2026. Specifically, **this bill:**

1) Extends the sunset on the authorization to offer alternative domestic violence programs that do not comply with the batterer's program requirements from July 1, 2023, to July 1, 2026.

2) Contains an urgency clause in order to prevent the authorization for alternative batterer's intervention programs in participating counties to lapse on July 1, 2023.

EXISTING LAW:

1) Authorizes the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer a program for individuals convicted of domestic violence that does not comply with the components of the batterer's program otherwise outlined in state law, if the program meets certain requirements. (Pen. Code, § 1203.099, subd. (a).)

2) Requires the counties to develop the program in consultation with the domestic violence service providers and other relevant community partners. (Pen. Code, § 1203.099, subd. (a)(1).)

3) Requires the counties to perform a risk and needs assessment utilizing an assessment demonstrated to be appropriate for domestic violence offenders for each offender entering the program. (Pen. Code, § 1203.099, subd. (a)(2).)

4) Requires that the offender's treatment within the program be based on the findings of the risk and needs assessment. (Pen. Code, § 1203.099, subd. (a)(3).)

5) Requires the program to include components that are evidence-based or promising practices. (Pen. Code, § 1203.099, subd. (a)(4).)

6) Requires the program to have a comprehensive written curriculum that informs the operations of the program and outlines the treatment and interventions modalities. (Pen. Code, § 1203.099, subd. (a)(5).)

7) Requires the offender's treatment within the program to be for not less than one year in length, unless an alternative length is established by a validated risk and needs assessment

completed by the probation department or an organization approved by the probation department. (Pen. Code, § 1203.099, subd. (a)(6).)

8) Requires the counties to collect data on participants in the program, as specified. (Pen. Code, § 1203.099, subd. (a)(7).)

9) Requires the counties report all of the following information annually to the Legislature:

   a) The risk and needs assessment tool used for the program;

   b) The curriculum used by each program;

   c) The number of participants with a program length other than one year, and the alternative program lengths used;

   d) Individual data on the number of offenders participating in the program;

   e) Other individual data that the county is required by law to collect, as specified. (Pen. Code, § 1203.099, subd. (a)(8)(A)-(E).)

10) Defines "evidence-based program or practice" as a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and evaluations that incorporate strong comparison group designs, or a single large multisite randomized study, and, typically, has specified procedures that allow for successful replication. (Pen. Code, § 1203.099, subd. (c)(1).)

11) Defines "promising program or practice" as a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation. (Pen. Code, § 1203.099, subd. (c)(2).)

12) Provides that the law authorizing the named counties to operate alternative batterer's programs sunsets on July 1, 2023. (Pen. Code, § 1203.099, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While California has been a leader in addressing and reducing domestic violence, the complexity underlying these issues needs to be further addressed ensuring that all batterer intervention programs are utilizing evidence-based principles that hold offenders accountable while addressing their criminogenic needs and reducing their recidivism. The existing pilot program established in 2018 has been enthusiastically embraced by the criminal justice partners in the six counties specified. Continuing this program will allow more offenders to get help, as well as allow criminal justice partners to continue monitoring and collecting substantive data to demonstrate the long-term effectiveness of the program."

2) **Evidence-Based Practices as Applied to Domestic Violence Offender Assessment, Treatment, and Supervision**: "Domestic violence offenders generally have a high rate of recidivism. Studies using direct victim interviews over a period of time estimate repeat violence in the range of 40 to 80 percent of cases." (Webster & Bechtel, *Evidence-Based Practices for Assessing, Supervising and Treating Domestic Violence Offender* (Aug. 2012) Crime and Justice Institute at Community Resources for Justice, p. 10, citation in footnote omitted.) "[D]omestic violence is a complicated community problem and we have yet to figure out what works for effectively intervening with batterers to reduce recidivism. Research to date has indicated that the most common court-mandated batterer intervention programs do not reduce recidivism or alter batterers' attitudes about violence." (*Id.*, at p. 12, citation in footnote omitted.) "Community supervision agencies are struggling with budget cuts, high caseloads and pressure to reduce failure rates. A growing body of literature points to four core practices that when implemented as a system can contribute to reductions in reoffending. These include (1) use a risk assessment tool to identify criminogenic risks and needs; (2) employ tailored supervision strategies and treatment plans; (3) implement a system of rewards and sanctions; and (4) provide skill-building support for probation officers." (*Id.* at p. ii.)

3) **State Auditor's Report on Batterer Intervention Programs:** In October 2022, the California State Auditor issued its audit of the state's batterer interventions programs. The Auditor examined the administration and oversight by the probation departments and courts in five counties—Alameda, Contra Costa, Del Norte, Los Angeles, and San Joaquin. The Auditor found that persons convicted of domestic violence were "far less likely to reoffend" if they completed a batterer's intervention program. However, nearly 50 percent of program participants reviewed by the Auditor did not complete the program, and most of those participants later reoffended. (Cal. State Auditor, *Batterer Intervention Programs: State Guidance and Oversight Are Needed to Effectively Reduce Domestic Violence*, p. 1 <https://www.auditor.ca.gov/pdfs/reports/2021-113.pdf> [last visited Mar. 9, 2023].)

   The State Auditor found "probation departments did not consistently assess all offenders for underlying issues, such as mental health or substance abuse concerns, that might interfere with an offender's ability to complete a program." (*Id.* at 2.) It also reported that "probation departments, program providers, and courts generally did not hold many of the offenders we reviewed accountable for probation and program violations." (*Ibid.*) Moreover, "even when notified about offenders' violations, the courts, in some instances, referred the offenders back to a program without imposing additional consequences," which according to the Auditor "likely weakens the impact of programs." (*Ibid.*)

   Specifically, the Auditor noted that "none of the five probation departments had established sufficient standards, policies, and procedures for overseeing program providers and ensuring program compliance." (*Ibid.*) As a result, "program providers did not supervise offenders appropriately or report required information." (*Ibid.*) The probation departments generally failed to address deficiencies in compliance with law by batterer's program providers. (*Ibid.*)

   AB 372 (Stone) authorized the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer an alternative program for individuals convicted of domestic violence that does not comply with the requirement for batterer's program under Penal Code section 1203.097. (Pen. Code, § 1203.099.) Whether these alternative programs for domestic violence offenders have achieved better outcomes than the batterer's

intervention programs the State Auditor analyzed remains an open question. Initial data on the alternative programs is promising. For example, whereas less than 50 percent of program participants reviewed by the State Auditor completed batterer's intervention programs, "The vast majority (83 percent) of people who entered a domestic violence program during the first year of implementation were still in the program when data was collected for this program." (California State Association of Counties, AB 372 Legislative Report: Year 1, p. 13 < https://www.counties.org/sites/main/files/file-attachments/ab372_year_1_legislative_report__final.pdf> [last visited Mar. 9, 2023.].) However, more recent data on the alternative programs is needed to fully access their efficacy.

This bill would extend the sunset of these alternative programs to July 1, 2026, providing counties more time to collect and report program outcomes.

4) **Department of Justice (DOJ) Oversight of Batterer's Intervention Programs:** AB 304 (Holden) would transfer responsibility for oversight of batterer's intervention programs from probation departments to the DOJ. This responsibility would include approving, monitoring, and renewing approvals of program providers, and developing comprehensive statewide standards for batterer's intervention programs. This bill would extend the authority of six counties—Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo—to provide programming to domestic violence offenders under specified circumstances that do not comply with current batterer's intervention program requirements. (Pen. Code, § 1203.99.) Authorization for the pilot programs is set to expire July 1, 2023. This bill would extend the sunset date to July 1, 2026.

   AB 304 (Holden) likely will not limit the authority of the designated counties to continue offering alternative programming to domestic violence offenders. It is also possible that best practices learned from the counties participating in the pilot program might be adopted by DOJ for establishing statewide standards.

5) **Argument in Support**: According to the *California District Attorneys Association*, the bill's sponsor: "Since July 2019, this pilot program has permitted six counties (Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo) to offer an alternative program for domestic violence offenders that uses evidence-based practices. Experts in the field of domestic violence recognized that the required 52-week batterer's program is not appropriate for every offender and there needs to be some flexibility in this type of program so that rehabilitation can be tailored to each offender.

   "Penal Code Section 1203.099 requires participating counties to perform a risk and needs assessment for every domestic violence offender entering the program. The program currently has a sunset date of July 1, 2023. Eliminating the sunset will ensure these alternatives remain available to individuals in these counties so that these counties can continue to address the individual needs of domestic violence offenders."

6) **Argument in Opposition**: None submitted.

7) **Related Legislation**:

a) AB 304 (Holden) would require Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the council. AB 304 will be heard in this committee today.

b) AB 467 (Gabriel) would clarify that the sentencing court in the county in which a domestic violence restraining order was issued may modify the order if the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim. AB 467 will be heard in this committee today.

8) **Prior Legislation**:

a) SB 616 (S. Rubio), of the 2021-2022 Legislative Session, would have expanded domestic violence educational requirements for judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in domestic violence proceedings. SB 616 was held on inactive file in the Senate.

b) AB 2555 (B. Rubio), of the 2021-2022 Legislative Session, would have required a person convicted of a domestic violence offense to be placed in a sobriety-monitoring program that requires testing of, and abstention from, alcohol and controlled substances if the offense was committed while the defendant was under the influence of drugs or alcohol. AB 2555 was referred to but did not receive a hearing in this committee.

c) AB 372 (Stone), Chapter 290, Statutes of 2018, authorized the Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo to offer a program for individuals convicted of domestic violence that does not comply with the requirement of the batterer's program, as specified, if the program meets certain requirements.

d) SB 218 (Solis), Chapter 662, Statutes of 1999, provided, among other things, authorization for the court to order a restrained person to participate in a batterer intervention program that has been approved by the probation department, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California State Association of Counties
Chief Probation Officers of California
Claremont Police Officers Association
Corona Police Officers Association
County of San Luis Obispo
County of Santa Barbara
Culver City Police Officers' Association

Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Napa County District Attorney's Office
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association
Yolo County District Attorney

1 Private Individual

Opposition

None

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

Amended Mock-up for 2023-2024 AB-479 (Blanca Rubio (A))

Mock-up based on Version Number 99 - Introduced 2/7/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Section 1203.099 of the Penal Code is amended to read:

1203.099. (a) The Counties of Napa, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, and Yolo may offer a program for individuals convicted of domestic violence that does not comply with the requirement of the batterer's program in Sections 1203.097 and 1203.098 if the program meets all of the following conditions:

(1) The county develops the program in consultation with the domestic violence service providers and other relevant community partners.

(2) The county performs a risk and needs assessment utilizing an assessment demonstrated to be appropriate for domestic violence offenders for each offender entering the program.

(3) The offender's treatment within the program is based on the findings of the risk and needs assessment.

(4) The program includes components which are evidence-based or promising practices.

(5) The program has a comprehensive written curriculum that informs the operations of the program and outlines the treatment and intervention modalities.

(6) The offender's treatment within the program is for not less than one year in length, unless an alternative length is established by a validated risk and needs assessment completed by the probation department or an organization approved by the probation department.

(7) The county collects all of the following data for participants in the program:

(A) The offender's demographic information, including age, gender, race, ethnicity, marital status, familial status, and employment status.

(B) The offender's criminal history.

(C) The offender's risk level as determined by the risk and needs assessment.

(D) The treatment provided to the offender during the program and if the offender completed that treatment.

(E) The offender's outcome at the time of program completion, and six months after completion, including subsequent restraining order violations, arrests and convictions, and feedback provided by the victim if the victim desires to participate.

(8) The county reports all of the following information annually to the Legislature:

(A) The risk and needs assessment tool used for the program.

(B) The curriculum used by each program.

(C) The number of participants with a program length other than one year, and the alternative program lengths used.

(D) Individual data on the number of offenders participating in the program.

(E) Individual data for the items described in paragraph (7).

(b) Offenders who complete a program described in subdivision (a) shall be deemed to have met the batterer's program requirements set forth in Section 1203.097.

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

(1) "Evidence-based program or practice" means a program or practice that has a high level of research indicating its effectiveness, determined as a result of multiple rigorous evaluations including randomized controlled trials and evaluations that incorporate strong comparison group designs, or a single large multisite randomized study, and, typically, has specified procedures that allow for successful replication.

(2) "Promising program or practice" means a program or practice that has some research demonstrating its effectiveness but does not meet the full criteria for an evidence-based designation.

(d) A report to be submitted pursuant to paragraph (8) of subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become operative on July 1, 2019.

(f) This section shall remain in effect only until July 1, 2026, and as of that date is repealed.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that alternative domestic violence programs continue, it is necessary for this act to take effect immediately.

Date of Hearing: March 14, 2023
Chief Counsel: Sandy Uribe

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

AB 484 (Gabriel) – As Introduced February 7, 2023

As Proposed to be Amended in Committee

SUMMARY: Re-enacts a sentence enhancement for specified property-related offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts. Specifically, **this bill**:

1) Provides that if a person takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court may impose an additional term as follows:

    a) If the loss exceeds $275,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years;

    b) If the loss exceeds $1.75 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years; and,

    c) If the loss exceeds $4.4 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

2) Prohibits imposition of the enhancement unless the facts are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

3) Defines "loss" as specified.

4) Raises the dollar limits required to impose enhancements for taking or destroying property during the commission of a felony, compared to the prior statute, but keeps the penalties consistent with the prior statute.

5) States legislative intent to review the threshold amounts every five years and adjust them for inflation.

6) Repeals these provisions on January 1, 2028.

EXISTING LAW:

1) Defines grand theft as any theft where the money, labor, or real or personal property taken is of a value exceeding $950. (Pen. Code, § 487, subd. (a).)

2) Defines embezzlement as the fraudulent appropriation of property by a person to whom it has been intrusted. (Pen. Code, § 503.)

3) States that every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled. (Pen. Code, § 514.)

4) Specifies that if the embezzlement is of the public funds of the United States, or of this state, the offense is a felony punishable in the state prison, and the person convicted is prohibited from holding any office of honor, trust, or profit in this state. (Pen. Code, § 514.)

5) Provides for a "white collar crime" enhancement which specifies that any person who commits two or more related felonies which involve a pattern of related felony conduct, and the pattern of related felony conduct involves fraud or embezzlement, shall receive an additional term of imprisonment in the state prison as specified, depending on the value of the property taken or the loss resulting from that conduct. (Pen. Code, § 186.11.)

PRIOR LAW: Provided that when any person takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

1) If the loss exceeds $65,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year;

2) If the loss exceeds $200,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years;

3) If the loss exceeds $1.3 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years; and,

4) If the loss exceeds $3.2 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years. (Former Pen. Code, § 12022.6 (Repealed as of January 1, 2017).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Currently, in California statute, penalties for the theft of property worth millions of dollars are the same as the theft of property worth a few hundred dollars. AB 484 will re-impose sentencing enhancements related the most severe and costly incidents of theft and property loss—more commonly known as "white collar" crimes. These crimes may not be violent, but they are certainly not victimless. White-

collar crimes can destroy a company, wipe out a person's life savings, cost families billions of dollars, and erode the public's trust in institutions. Moreover, white collar crimes often target some of our most vulnerable populations, such as the elderly and disabled. AB 484 reinstates an important sentencing enhancement and crucial tool used by law enforcement to help address these devastating and sophisticated fraud schemes."

2) **Great Takings Enhancement**: Until January 1, 2018, state law required the court to impose an additional term of imprisonment, as specified, when any person takes, damages, or destroys any property in the commission or attempted commission of a felony, as specified.

This enhancement, known as the "great takings" enhancement, in former Penal Code section 12022.6 became effective in 1977. It appears that a sunset provision became effective in 1990. The sunset clause was re-written through legislation in 1992. The sunset was then extended from 1998 to 2008 by AB 293 (Cunneen), Chapter 551, Statutes of 1997. The sunset provision stated that the purpose of the provision is to allow the Legislature to consider the effects of inflation on the enhancement thresholds in the law.

AB 1705 (Niello), Chapter 420, Statutes of 2007, raised the dollar limits and contained a sunset date of January 1, 2018. Again, accompanying the sunset date was a statement of legislative intent which indicated that the provisions would be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason section 12022.6 remained in effect only until January 1, 2018. AB 1511 (Low) of the 2017-2018 legislative session would have raised the amounts to trigger the enhancement to reflect the 2017 levels of inflation, but would have removed the sunset date. That bill was vetoed. Therefore, by virtue of the sunset date in the prior legislation, the enhancement was repealed.

This bill would re-enact the statutory framework providing enhanced punishment when an individual is convicted of crimes which result in the loss of specified dollar amounts of property. It authorizes, but does not require, the court to impose the enhancement. This bill raises the dollar limits required to trigger the respective levels of punishment to account for inflation.[1] The bill establishes a sunset date of January 1, 2028, and expresses and intent that the Legislature review the dollar thresholds every five years and adjust them to consider the effects of inflation.

3) **Governor's Veto Message**: As noted above, in 2018, the Legislature passed AB 1511 (Low) which was the same as this bill; however, the measure was vetoed by former Governor Brown. In his veto message, the Governor said:

"This bill re-enacts and re-casts a previous enhancement for excessive takings which was allowed to sunset on January 1, 2018.

"Penal Code Section 12022.6 was enacted in 1977, and in 1990, AB 3087 added a sunset provision, repealing the statute as of July 1, 1992. That sunset date has been extended several times since then, first in 1992 (AB 939) extending the date to 1998, then in 1997 (AB 293)

---

[1] As introduced, the bill reflected amounts which took into account the effects of inflation in 2017, when AB 1511 (Low) was introduced. The committee amendments raise the amount to reflect the effects of inflation today, using the Bureau of Labor Statistics inflation calculator: https://www.bls.gov/data/inflation_calculator.htm

extending the date by 10 years, to 2008. In 2007, via AB 1705, the Legislature again extended the sunset 10 more years to 2018. The statute was not further extended at that time, and Penal Code Section 12022.6 was therefore repealed on January 1, 2018.

"AB 1511 now seeks to re-enact this repealed enhancement, but omits any sunset provision similar to those that have been included with this statute since 1990. I see no reason to now permanently re-enact a repealed sentencing enhancement without corresponding evidence that it was effective in deterring crime. As I have said before, California has over 5,000 criminal provisions covering almost every conceivable form of human misbehavior. We can effectively manage our criminal justice system without 5,001."

In contrast to the vetoed bill, this bill does contain a sunset provision.

Research on the Deterrent Effect and Impact on State Prisons: According the U.S. Department 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." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

In a 2014 report, the Little Hoover Commission also addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.) Additionally, the Commission also explained how California's sentencing structure and enhancements contributed to a 20-year state prison building boom: "California policymakers enacted hundreds of laws increasing sentence length, adding sentence enhancements and creating new sentencing laws. The end result was that every new prison the state built was quickly filled to capacity." (*Id.* at p. 9.)

CDCR has informed this committee that in the three years preceding the repeal of this enhancement, the following number of admissions had one or more great taking enhancements applied to their case:

Year[2]	Number of Unique Offenders	Number of Unique Cases Per Offender	Number of PC 12022.6(a)(2) Enhancements	Number of PC 12022.6(a)(3) Enhancements	Number of PC 12022.6(a)(4) Enhancements	Aggregate Number of Enhancements
2015	43	43	192	45	4	241
2016	49	49	159	38	4	201
2017	53	54	130	7	35	172

[2] Year is based on the case's sentence pronounced date. For cases that were resentenced, the information is based on the original sentencing and excludes information post-resentencing.

It should be noted, however, that some of these enhancements were stayed by the court and so did not affect the actual term of incarceration.

4) **Argument in Support**: According to the *Santa Clara County District Attorney's Office*, "Former Penal Code section 12022.6 allowed for an additional term of imprisonment when someone intentionally took, damaged, or destroyed property over a certain amount in the commission or attempted commission of a felony. Originally enacted in 1977, this statute was overwhelmingly supported by the legislature to enhance the law enforcement and judicial process for prosecuting these crimes. The statute sunsetted in 2018. Now, without this statute, penalties for the theft of property worth millions of dollars are the same as the theft of property worth a few hundred dollars.

   "AB 484 will revive the previous statute that allowed for an additional term of imprisonment when someone intentionally took, damaged, or destroyed property over a certain amount in the commission or attempted commission of a felony.

   "These crimes may not be violent, but they are certainly not victimless. White-collar crimes can destroy a company, wipe out a person's life savings, cost families billions of dollars, and erode the public's trust in institutions. Moreover white collar crimes often target some of our most vulnerable populations, such as the elderly and disabled."

5) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "This bill creates 1) a new regime of increased incarceration via sentencing enhancements for certain property crimes involving taking, damage, or destruction of property and 2) reinstates additional punishment for property crimes associated with a cross-reference to a statute that had been repealed (while simultaneously increasing the baseline of punishment for those crimes). CACJ opposes all these provisions, believing that current law is sufficiently punitive and additional incarceration is generally not needed for crimes involving destruction of property.

   "As explained by the legislative counsel's digest, this bill would create a triad of sentencing enhancements for felonies in which a person takes, damages, or destroys property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction. The bill authorizes an additional term of imprisonment of up to 2 years if the property loss exceeds $235,000, 3 years if the property loss exceeds $1,500,000, or up to 4 years if the property loss exceeds $3,700,000. Increased prison time is not the solution to crimes involving economic loss. Prison time—in the form of lengthy prison sentences—are already available for crimes involving taking and/or destruction of highly valued property. In the area of property crimes, the focus ought to be on increased enforcement. Moreover, because 'loss' calculations are notoriously difficult to ascertain with precision in cases involving large losses, enhancements tied to valuation of loss are generally problematic and increase arbitrariness in the system.

   "In addition, this bill reinstates an enhancement that had been available for certain patterns of felonious conduct that involved the taking of property. Currently, an enhancement is only available for a pattern of related felony conduct involving more than $500,000. This bill 1) reinstates an enhancement for cases involving between $100,000 and $500,000 dollars, and 2) increases the length of prison time available for that enhancement. Again, lengthy prison

terms are already available for such crimes, with a wide area of enhancements depending on the facts of the case. Increasing terms of incarceration for crimes involving economic loss will be costly to taxpayers, will do little to deter these crimes, and will ultimately increase arbitrariness in sentencing due to the uncertainties inherent in economic calculations of large magnitude."

6) **Prior Legislation**:

a) AB 1511 (Low) of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 1511 was vetoed by the Governor.

b) AB 1705 (Niello), Chapter 420, Statutes of 2007, raised the dollar limits on the excessive takings enhancement and set a sunset date of January 1, 2018.

c) AB 293 (Cunneen), Chapter 551, Statutes of 1997, extended the sunset date of the excessive takings enhancement for 10 years, from 1998 to 2008.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cattlemen's Association
California State Sheriff's Association
Santa Clara District Attorney's Office
Peace Officers Research Association of California

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

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

Amended Mock-up for 2023-2024 AB-484 (Gabriel (A))

Mock-up based on Version Number 99 - Introduced 2/7/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 186.11 of the Penal Code is amended to read:

186.11. (a) (1) Any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars ($100,000), shall be punished, upon conviction of two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which they have been convicted, by an additional term of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall be known as the aggravated white collar crime enhancement. The aggravated white collar crime enhancement shall only be imposed once in a single criminal proceeding. For purposes of this section, "pattern of related felony conduct" means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, "two or more related felonies" means felonies committed against two or more separate victims, or against the same victim on two or more separate occasions.

(2) If the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than five hundred thousand dollars ($500,000), the additional term of punishment shall be two, three, or five years in the state prison.

(3) If the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), the additional term of punishment shall be two years in state prison.

(b) (1) The additional prison term and penalties provided for in subdivisions (a), (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(2) The additional prison term provided in paragraph (2) of subdivision (a) shall be in addition to any other punishment provided by law, including Section 12022.6, and shall not be limited by any other provision of law.

(c) Any person convicted of two or more felonies, as specified in subdivision (a), shall also be liable for a fine not to exceed five hundred thousand dollars ($500,000) or double the value of the taking, whichever is greater, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. However, if the pattern of related felony conduct involves the taking of more than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), the fine shall not exceed one hundred thousand dollars ($100,000) or double the value of the taking, whichever is greater.

(d) (1) If a person is alleged to have committed two or more felonies, as specified in subdivision (a), and the aggravated white collar crime enhancement is also charged, or a person is charged in an accusatory pleading with a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000), and an allegation as to the existence of those facts, any asset or property that is in the control of that person, and any asset or property that has been transferred by that person to a third party, subsequent to the commission of any criminal act alleged pursuant to subdivision (a), other than in a bona fide purchase, whether found within or outside the state, may be preserved by the superior court in order to pay restitution and fines. Upon conviction of two or more felonies, as specified in subdivision (a), or a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000), this property may be levied upon by the superior court to pay restitution and fines if the existence of facts that would make the person subject to the aggravated white collar crime enhancement or that demonstrate the taking or loss of more than one hundred thousand dollars ($100,000) in the commission of a felony, a material element of which is fraud or embezzlement, have been charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(2) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging two or more felonies, as specified in subdivision (a), and the enhancement specified in subdivision (a), or a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000), and an allegation as to the existence of those facts, file a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets. This petition shall commence a proceeding that shall be pendent to the criminal proceeding and maintained solely to affect the criminal remedies provided for in this section. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with two or more felonies, as specified in subdivision (a), and is subject to the aggravated white collar crime enhancement specified in subdivision (a) or that the defendant has been charged with a felony, a material element of which is fraud or

embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000), and an allegation as to the existence of those facts. The petition shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section.

(3) A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. Additionally, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by an order issued pursuant to this section is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of their claimed interest. The notice shall set forth the time within which a claim of interest in the protected property is required to be filed.

(4) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description, the name of the owner of record as shown on the latest equalized assessment roll, and the assessor's parcel number.

(5) If the property to be preserved are assets under the control of a banking or financial institution, the prosecuting agency, at the time of the filing of the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy.

(6) Any person claiming an interest in the protected property may, at any time within 30 days from the date of the first publication of the notice of the petition, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating the nature and amount of their interest in the property or assets. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(7) The imposition of fines and restitution pursuant to this section shall be determined by the superior court in which the underlying criminal offense is sentenced. Any judge who is assigned to the criminal division of the superior court in the county where the petition is filed may issue a temporary restraining order in conjunction with, or subsequent to, the filing of an allegation pursuant to this section. Any subsequent hearing on the petition shall also be heard by a judge assigned to the criminal division of the superior court in the county in which the petition is filed. At the time of the filing of an information or indictment in the underlying criminal case, any subsequent hearing on the petition shall be heard by the superior court judge assigned to the underlying criminal case.

(e) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, the following pendente lite orders to preserve the status quo of the property alleged in the petition:

(1) An injunction to restrain any person from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved. The court may order that a receiver appointed pursuant to this section shall be compensated for all reasonable expenditures made or incurred by them in connection with the possession, care, management, and operation of any property or assets that are subject to the provisions of this section.

(3) A bond or other undertaking, in lieu of other orders, of a value sufficient to ensure the satisfaction of restitution and fines imposed pursuant to this section.

(f) (1) No preliminary injunction may be granted or receiver appointed by the court without notice that meets the requirements of paragraph (3) of subdivision (d) to all known and reasonably ascertainable interested parties and upon a hearing to determine that an order is necessary to preserve the property pending the outcome of the criminal proceedings. A temporary restraining order may be issued by the court, ex parte, pending that hearing in conjunction with or subsequent to the filing of the petition upon the application of the prosecuting attorney. The temporary restraining order may be based upon the sworn declaration of a peace officer with personal knowledge of the criminal investigation that establishes probable cause to believe that aggravated white collar crime or a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000) has taken place and that the amount of restitution and fines exceeds or equals the worth of the assets subject to the temporary restraining order. The declaration may include the hearsay statements of witnesses to establish the necessary facts. The temporary restraining order may be issued without notice upon a showing of good cause to the court.

(2) The defendant, or a person who has filed a verified claim as provided in paragraph (6) of subdivision (d), shall have the right to have the court conduct an order to show cause hearing within 10 days of the service of the request for hearing upon the prosecuting agency, in order to determine whether the temporary restraining order should remain in effect, whether relief should be granted from any lis pendens recorded pursuant to paragraph (4) of subdivision (d), or whether any existing order should be modified in the interests of justice. Upon a showing of good cause, the hearing shall be held within two days of the service of the request for hearing upon the prosecuting agency.

(3) In determining whether to issue a preliminary injunction or temporary restraining order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the filing of an allegation pursuant to this section, the court has the discretion to consider any matter that it deems reliable and appropriate, including hearsay statements, in order to reach a just and equitable decision. The court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief. If the prosecution is likely to prevail on the merits and the risk of the dissipation of assets outweighs the potential harm to the

defendants and the interested parties, the court shall grant injunctive relief. The court shall give significant weight to the following factors:

(A) The public interest in preserving the property or assets pendente lite.

(B) The difficulty of preserving the property or assets pendente lite where the underlying alleged crimes involve issues of fraud and moral turpitude.

(C) The fact that the requested relief is being sought by a public prosecutor on behalf of alleged victims of white collar crimes.

(D) The likelihood that substantial public harm has occurred where aggravated white collar crime is alleged to have been committed.

(E) The significant public interest involved in compensating the victims of white collar crime and paying court-imposed restitution and fines.

(4) The court, in making its orders, may consider a defendant's request for the release of a portion of the property affected by this section in order to pay reasonable legal fees in connection with the criminal proceeding, any necessary and appropriate living expenses pending trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the public to retain the property against the needs of the defendant to a portion of the property. The court shall consider the factors listed in paragraph (3) prior to making any order releasing property for these purposes.

(5) The court, in making its orders, shall seek to protect the interests of any innocent third persons, including an innocent spouse, who were not involved in the commission of any criminal activity.

(6) Any petition filed pursuant to this section is part of the criminal proceedings for purposes of appointment of counsel and shall be assigned to the criminal division of the superior court of the county in which the accusatory pleading was filed.

(7) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph (2) of subdivision (e), the court may order an interlocutory sale of property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof. The proceeds of the interlocutory sale shall be deposited with the court or as directed by the court pending determination of the proceeding pursuant to this section.

(8) The court may make any orders that are necessary to preserve the continuing viability of any lawful business enterprise that is affected by the issuance of a temporary restraining order or preliminary injunction issued pursuant to this action.

(9) In making its orders, the court shall seek to prevent any asset subject to a temporary restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise being

significantly reduced in value. Where the potential for diminution in value exists, the court shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

(10) A preservation order shall not be issued against any assets of a business that are not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

(g) If the allegation that the defendant is subject to the aggravated white collar crime enhancement or has committed a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000) is dismissed or found by the trier of fact to be untrue, any preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved. If a jury is the trier of fact, and the jury is unable to reach a unanimous verdict, the court shall have the discretion to continue or dissolve all or a portion of the preliminary injunction or temporary restraining order based upon the interests of justice. However, if the prosecuting agency elects not to retry the case, any preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved.

(h) (1) (A) If the defendant is convicted of two or more felonies, as specified in subdivision (a), and the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact, or the defendant is convicted of a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000), and an allegation as to the existence of those facts has been admitted or found to be true by the trier of fact, the trial judge shall continue the preliminary injunction or temporary restraining order until the date of the criminal sentencing and shall make a finding at that time as to what portion, if any, of the property or assets subject to the preliminary injunction or temporary restraining order shall be levied upon to pay fines and restitution to victims of the crime. The order imposing fines and restitution may exceed the total worth of the property or assets subjected to the preliminary injunction or temporary restraining order. The court may order the immediate transfer of the property or assets to satisfy any judgment and sentence made pursuant to this section. Additionally, upon motion of the prosecution, the court may enter an order as part of the judgment and sentence making the order imposing fines and restitution pursuant to this section enforceable pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(B) Additionally, the court shall order the defendant to make full restitution to the victim. The payment of the restitution ordered by the court pursuant to this section shall be made a condition of any probation granted by the court if the existence of facts that would make the defendant subject to the aggravated white collar crime enhancement or of facts demonstrating the person committed a felony, a material element of which is fraud or embezzlement, that involves the taking or loss of more than one hundred thousand dollars ($100,000) have been admitted or found to be true by the trier of fact. Notwithstanding any other provision of law, the court may order that the period of probation continue for up to 10 years or until full restitution is made to the victim, whichever is earlier.

(C) The sentencing court shall retain jurisdiction to enforce the order to pay additional fines and restitution and, in appropriate cases, may initiate probation violation proceedings or contempt of

court proceedings against a defendant who is found to have willfully failed to comply with any lawful order of the court.

(D) If the execution of judgment is stayed pending an appeal of an order of the superior court pursuant to this section, the preliminary injunction or temporary restraining order shall be maintained in full force and effect during the pendency of the appellate period.

(2) The order imposing fines and restitution shall not affect the interest in real property of any third party that was acquired prior to the recording of the lis pendens, unless the property was obtained from the defendant other than as a bona fide purchaser for value. If any assets or property affected by this section are subject to a valid lien, mortgage, security interest, or interest under a conditional sales contract and the amount due to the holder of the lien, mortgage, interest, or contract is less than the appraised value of the property, that person may pay to the state or the local government that initiated the proceeding the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the interest in the property shall be deemed transferred to the state or local governmental entity and any indicia of ownership of the property shall be confirmed in the state or local governmental entity. The appraised value shall be determined as of the date judgment is entered either by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity involved, or, if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of their interest.

(3) In making its final order, the court shall seek to protect the legitimately acquired interests of any innocent third persons, including an innocent spouse, who were not involved in the commission of any criminal activity.

(i) In all cases where property is to be levied upon pursuant to this section, a receiver appointed by the court shall be empowered to liquidate all property or assets which shall be distributed in the following order of priority:

(1) To the receiver, or court-appointed appraiser, for all reasonable expenditures made or incurred by them in connection with the sale of the property or liquidation of assets, including all reasonable expenditures for any necessary repairs, storage, or transportation of any property levied upon under this section.

(2) To any holder of a valid lien, mortgage, or security interest up to the amount of their interest in the property or proceeds.

(3) To any victim as restitution for any fraudulent or unlawful acts alleged in the accusatory pleading that were proven by the prosecuting agency as part of the pattern of fraudulent or unlawful acts.

(4) For payment of any fine imposed pursuant to this section. The proceeds obtained in payment of a fine shall be paid to the treasurer of the county in which the judgment was entered, or if the action was undertaken by the Attorney General, to the Treasurer. If the payment of any fine imposed pursuant to this section involved losses resulting from violation of Section 550 of this code or Section 1871.4 of the Insurance Code, one-half of the fine collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the fine collected shall be paid to the Department of Insurance for deposit in the appropriate account in the Insurance Fund. The proceeds from the fine first shall be used by a county to reimburse local prosecutors and enforcement agencies for the reasonable costs of investigation and prosecution of cases brought pursuant to this section.

(5) To the Restitution Fund, or in cases involving convictions relating to insurance fraud, to the Insurance Fund as restitution for crimes not specifically pleaded and proven in the accusatory pleading.

(j) If, after distribution pursuant to paragraphs (1) and (2) of subdivision (i), the value of the property to be levied upon pursuant to this section is insufficient to pay for restitution and fines, the court shall order an equitable sharing of the proceeds of the liquidation of the property, and any other recoveries, which shall specify the percentage of recoveries to be devoted to each purpose. At least 70 percent of the proceeds remaining after distribution pursuant to paragraphs (1) and (2) of subdivision (i) shall be devoted to restitution.

(k) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state, except that two separate actions against the same defendant and pertaining to the same fraudulent or unlawful acts may not be brought by a district attorney or the Attorney General pursuant to this section and Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. If a fine is imposed under this section, it shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action.

SEC. 2. Section 12022.6 is added to the Penal Code, to read:

12022.6. (a) If a person takes, damages, or destroys property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court may impose an additional term as follows:

(1) If the property loss exceeds ~~two hundred thirty-five thousand dollars ($235,000)~~ **two hundred seventy-five thousand dollars ($275,000)**, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of up to two years.

(2) If the property loss exceeds ~~one million five hundred thousand dollars ($1,500,000)~~ **one million seven hundred fifty thousand dollars ($1,750,000)**, the court, in addition and

consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of up to three years.

(3) If the property loss exceeds ~~three million seven hundred thousand dollars ($3,700,000)~~ **four million four hundred thousand dollars ($4,400,000)**, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of up to four years.

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance described in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7. This section shall also apply to applicable prosecutions for a violation of Section 350, 653h, 653s, or 653w.

(e) For the purposes of this section, the term "loss" has the following meanings:

(1) When counterfeit items of computer software are manufactured or possessed for sale, the "loss" from the counterfeiting of those items shall be equivalent to the retail price or fair market value of the true items that are counterfeited.

(2) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "loss" from the counterfeiting of those components of computer software packages shall be equivalent to the retail price or fair market value of the number of completed computer software packages that could have been made from those components.

(f) It is the intent of the Legislature to review the threshold amounts in subdivision (a) every five years and adjust them for inflation. For that reason, this section shall remain in effect only until January 1, 2028, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2028, deletes or extends that date.

SEC. 3. 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: March 14, 2023
Chief Counsel: Sandy Uribe

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

AB 508 (Petrie-Norris) – As Amended March 7, 2023

SUMMARY: Extends the maximum allowable period of probation for specified environmental crimes when they are committed by an entity with more than 10 employees. Specifically, **this bill**:

1) States that notwithstanding other statutes limiting the length of a probationary term to one year in misdemeanor cases and two years in felony cases, if an entity is granted probation based on conviction of an "environmental crime," the term of probation can be set at up to five years.

2) Defines environmental crimes for purposes of extending probation as the following:

   a) Specified provisions of the Fish and Game Code related to the unlawful taking of birds, mammals, fish, reptiles, or amphibians; the sale, purchase or capture of desert tortoises; the unlawful use of explosives in state waters inhabited by fish; and discharge of specified substances into the waters of the State;

   b) Specified provisions of the Food and Agriculture Code related to pesticides;

   c) Specified provision of the Harbors and Navigation Code related to discharging cargo overboard from a vessel, and discharging oil upon navigable waters;

   d) Specified provisions of the Health and Safety Code known as the Medical Waste Management Act, and the Aboveground Petroleum Storage Act.

   e) Specified provisions of the Health and Safety Code relating to non-vehicular air pollution control, hazardous waste control, underground storage of hazardous substances, and hazardous materials release;

   f) Specified provisions of the Government Code known as the Lempert–Keene–Seastrand Oil Spill Prevention and Response Act;

   g) Specified provisions of the Penal Code related to malicious discharge of any substance capable of causing substantial damage or harm to the operation of a public sewer system; illegal dumping; grease waste hauling violations; depositing hazardous substances; animal cruelty; importation, possession for sale, or sale of endangered species; and possession or sale of a dead seal;

h) Vehicular transportation of hazardous material, and hazardous material transportation in violation of regulations of the Department of the California Highway Patrol; and,

i) Specified provisions of the Water Code mandating compliance with the Federal Clean Water Act.

3) Defines "entity" as "a trust, firm, partnership, joint stock company, joint venture, association, limited liability company, corporation, or other legal entity with more than 10 employees."

EXISTING LAW:

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

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

3) Sets the period of probation for a misdemeanor to no longer than one year, unless the offense includes specific probation lengths within its provisions. (Pen. Code, § 1203a.)

4) Sets the period of probation for a felony to no longer than two years, except as specified (Pen. Code, § 1203.1, subds. (a) & (l).)

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

6) Authorizes the court to revoke, modify, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

7) Requires a court which grants probation to make payment of victim restitution a condition of probation. Any unsatisfied amount of restitution after a defendant is no longer on probation is enforceable as a civil judgment. (Pen. Code, § 1202.4, subd. (l).)

8) Authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

9) Requires the court to consider whether, as a condition of probation, the defendant shall make restitution to a public agency for the costs of an emergency response, as specified. (Pen. Code, § 1203.1, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 508 will help ensure corporations and other business entities who violate California environmental laws and are placed on probation complete the corresponding terms and conditions by expanding the probation time limit to a maximum of five years. This will ensure that corporate violators complete the requirements of their probation, including changing policies, training, and updating their industrial processes.

   "The need for extended regulatory oversight was exemplified in the 2022 oil spill case in Orange County, where the defendants (two corporations and an LLC) pled no contest to the criminal charges of failing to immediately report a discharge of oil into waters of the state, water pollution, and killing of protected wildlife. The defendant was ordered to pay state criminal fines totaling $4.9 million dollars and was placed on probation. The probation terms included significant training requirements, updating internal procedures, submitting new contingency plans, revising inspection timeframes, amongst other requirements. A one-year probation term does not allow nearly enough time for the appropriate regulatory oversight to ensure the defendant has made the necessary changes to ensure such a violation does not occur again. AB 508 is needed to protect our communities from serious environmental hazards."

2) **Corporate Criminal Liability**: Corporations can be subject to criminal liability. The Penal Code applies to corporations, and it defines "person" to include a corporation as well as a natural person. (Pen. Code, § 7.) Of course, unlike a natural person, a corporation cannot be incarcerated as a form of punishment after being convicted of a crime.

   For example, in 2016 a federal jury found Pacific Gas & Electric Co. guilty of obstruction and five counts of pipeline safety violations after natural gas pipeline blast six sent a plume of fire into the air, killing eight people and destroying 38 homes in San Bruno, California. PG&E employees were not individually charged, so no one faced incarceration due to the criminal conduct. (*PG&E is Found Guilty of Obstructing Investigators After Deadly 2010 Pipeline Blast*, Associated Press, Aug. 9, 2016., https://www.latimes.com/business/la-fi-pge-san-bruno-pipeline-blast-20160809-snap-story.html [as of March 9, 2023].)

3) **Probation Supervision**: Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "Informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120. A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at 1121.)

   In 2020, the Legislature passed AB 1950 (Kamlager) Chapter 328, which went into effect on January 1, 2021, and reduces the maximum length of probation for both misdemeanor and felony cases (in most cases). For felonies, the term of probation was reduced from five years (where the punishment did not exceed five years) to two years. (Pen. Code, § 1203.1.) For misdemeanors the term of probation was reduced from three years to one year. (Pen. Code, § 1203a.) In both types of cases, there was an exception made if a specific probation length

was already dictated in statute describing the punishment for a particular criminal offense. (*Ibid.*)

Since many environmental crimes are classified as misdemeanors, proponents of this bill argue that the reduced period of probation is insufficient to hold corporate wrongdoers accountable. This bill would extend the possible probationary term for specified environmental crimes committed by a business entity, as defined, to a maximum of five years.

4) **Other Possible Remedies**: Criminal liability is not the only response to corporate wrongdoing. And extending the length of a probationary term does not necessarily ensure that a business entity is held accountable for its criminal conduct. When an individual is granted probation, the possibility of incarceration in jail or prison looms, as a probationer who violates a condition of probation can have their probation revoked and the their suspended criminal sentence executed, or have a sentence imposed if one has not yet been imposed. However, with a business entity who will not suffer incarceration for criminal wrongdoing, there is no similar incentive to comply and successfully complete probation, no matter the length of the probationary period.

   For example, the federal judge who supervised PG&E during its five-year probationary period, noted the utility's failure to reform despite five years on probation. The judge acknowledge the failure: "While on probation, PG&E has set at least 31 wildfires, burned nearly one and one-half million acres, burned 23,956 structures, and killed 113 Californians." "In probation, with a goal of rehabilitation in mind, we always prefer that criminal offenders learn to accept responsibility for their actions," the judge wrote. "Sadly, during all five years of probation, PG&E has refused to accept responsibility for its actions until convenient to its cause or until it is forced to do so." (*PG&E Probation Ends, But Judge Offers Harsh comments*, W. Shuck, Capitol Weekly, Jan. 25, 2022, https://capitolweekly.net/pge-probation-ends-but-judge-offers-harsh-comments/ [as of March 9, 2023].)

   There are other, possibly more effective, ways to ensure compliance. Many corporations and other business entities are subject to state and federal regulatory agencies and licensing boards. Failure to address cleanup/abatement, and/or follow through with remedial plans and training could be handled by these administrative bodies. Further, a business entity may also be liable in civil court for damages arising from the business's criminal conduct. Arguably, financial penalties is what will most impact a business entity.

5) **Argument in Support**: According to the *Office of the Orange County District Attorney*, the sponsor of this bill, "As background, most environmental defendants are placed on informal probation and do not report to the probation department. The terms and conditions of this informal probation are narrowly tailored to the specific regulatory crime that was violated with the goal of preventing its recurrence and abating the harm caused. The need for extended regulatory oversight was exemplified by the 2022 oil spill in Orange County, where the defendant pled no contest to the criminal charges of failing to report a discharge of oil into waters of the state, water pollution, and killing of protected wildlife. The defendant was ordered to pay state criminal fines totaling $4.9 million dollars and was placed on probation. The probation terms included vast training requirements, updating internal procedures, submitting updated contingency plans, revising inspection timeframes, amongst other requirements. A one-year probation term does not allow enough time for the appropriate

regulatory oversight to endure the defendant has made the necessary changes to ensure such an egregious violation does not occur again.

"AB 508 is needed to ensure corporations and other business entities who violate California environmental laws and are placed on probation will be required to follow those terms and conditions of probation longer than just one year. It often takes environmental violators a period of time to revise and alter their policies, procedures, training programs, and update their industrial processes. AB 508 is needed to help protect the health and safety of the people of California and our environment."

6) **Argument in Opposition**: None submitted.

7) **Prior Legislation**:

a) AB 1753 (Gallagher), of the 2021-2022 Legislative Session, would have extended the period of probation for up to three years for specified crimes of illegal poaching. AB 1753 was not heard by the Water, Parks, and Wildlife Committee.

b) AB 645 (Gallagher) of the 2021-2022 Legislative Session, would have extended the period of probation for up to three years for specified crimes of illegal poaching. AB 654 was held in the Assembly Appropriations Committee.

c) AB 1950 (Kamlager), Chapter 328, Statutes of 2020, limits the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

d) AB 2205 (Dodd), of the Legislative Session of 2015-2016, would have overturned a Supreme Court case holding that a court lacks jurisdiction to adjudicate violations of probation occurring after the original term of probation ends. AB 2205 was never heard in the Assembly Public Safety Committee.

e) AB 2477 (Patterson), of the Legislative Session of 2015-2016, would have overturned case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. AB 2477 failed passage in the Assembly Public Safety Committee.

f) AB 2339 (Quirk), Legislative Session of 2013-2014, would have required that all terms and conditions of supervision shall remain in effect during the time period that the running of the period of supervision is tolled. AB 2339 was never heard in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Orange County District Attorney (Sponsor)
California District Attorneys Association (Co-Sponsor)
Orange County Coastkeeper
San Diego City Attorney's Office

San Luis Obispo County District Attorney

Opposition

None

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

Date of Hearing: March 14, 2023
Counsel: Cheryl Anderson

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

AB 600 (Ting) – As Amended March 7, 2023

SUMMARY: Allows a court to recall a sentence at any time if applicable sentencing laws are subsequently changed due to new statutes or case law, and makes changes to the procedural requirements to be followed when requests for recall are made. Specifically, **this bill**:

1) Authorizes the court to recall a sentence, on its own motion, at any time if the applicable sentencing laws have subsequently changed due to new statutory or case law authority.

2) Eliminates the requirement that the district attorney or Attorney General (AG) must concur with resentencing and imposing judgment on any lesser included or lesser related offense, whether or not that offense was charged in the original pleading, and then sentence the defendant to the reduced term based on that offense.

3) Requires, instead of allows, the court to consider postconviction factors at resentencing.

4) Specifies that in considering whether to resentence, evidence that the defendant's incarceration is no longer in the interest of justice includes:

   a) Evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue; and

   b) Any other evidence that undermines the integrity of the underlying conviction or sentence.

5) Clarifies that the presumption favoring recall and resentencing may only be overcome if a court finds that the defendant currently poses an unreasonable risk of danger to public safety.

6) Requires the court, after ruling on a motion for recall and resentencing, to advise the defendant of the right to appeal and of the necessary steps and time for taking an appeal.

7) Makes legislative findings and declarations.

EXISTING LAW:

1) Provides that the purpose of sentencing for crime is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. (Pen. Code, § 1170, subd. (a)(1).)

2) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its discretion, impose a sentence not to exceed the middle term, unless there are circumstances in aggravation, as specified. (Pen. Code, § 1170, subd. (b).)

3) Provides that when an enhancement is to be imposed and the statute specifies three possible terms, the court shall, in its discretion, impose a sentence not to exceed the middle term, unless there are circumstances in aggravation, as specified. (Pen. Code, § 1170, subd. (d).)

4) Provides that when a defendant has been sentenced to be imprisoned, the court may, within 120 days of the date of commitment on its own motion, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced. (Pen. Code, § 1172.1, subd. (a)(1).)

5) Authorizes the court also to recall and resentence at any time upon the recommendation of the secretary of the California Department of Corrections and Rehabilitation (CDCR) or the Board of Parole Hearings (BPH) in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, the district attorney of the county in which the defendant was sentenced, or the AG if the Department of Justice (DOJ) initially prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(1).)

6) Provides that the new sentence cannot be greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).)

7) Requires the court, in recalling and resentencing, to apply the sentencing rules of the Judicial Council and aany changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity and to promote uniformity of sentences. (Pen. Code, § 1172.1, subd. (a)(2).)

8) States the resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

   a) Reduce a defendant's term of imprisonment by modifying the sentence; or

   b) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the AG if the DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(3).)

9) Allows the court to consider post-conviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. (Pen. Code, § 1172.1, subd. (a)(4).)

10) Requires the court, to consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual

violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth, as defined, at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. (Pen. Code, § 1172.1, subd. (a)(4).)

11) Requires credits to be given for time served. (Pen. Code, § 1172.1, subd. (a)(5).)

12) Requires the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (Pen. Code, § 1172.1, subd. (a)(6).)

13) States that resentencing may be granted without a hearing upon stipulation of the parties. (Pen. Code, § 1172.1, subd. (a)(7).)

14) States that resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. (Pen. Code, § 1172.1, subd. (a)(8).)

15) Provides that if a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court. (Pen. Code, § 1172.1, subd. (a)(8).)

16) Provides that if a resentencing request is from CDCR, BPH, a county correctional administrator, a district attorney, or the AG, all of the following apply:

    a) The court must provide notice to the defendant and set a status conference within 30 days after the date that the court received the request and appoint counsel to represent the defendant; and,

    b) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined. (Pen. Code, § 1172.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's Penal Code allows for law enforcement authorities to request a person be resentenced if the circumstances have changed since the original sentencing and/or if the person's incarceration is no longer in the interest of justice. AB 600 addresses remaining procedural and technical issues, expand[s] judicial authority and provide[s] clarity for courts when applying the law."

2) **Recall and Resentencing Provisions – Second Look Sentencing:** As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Ibid.*)

   However, the Legislature has created limited statutory exceptions allowing a court to recall a

sentence and resentence the defendant. (*Dix, supra*, 53 Cal.3d at p. 455; see e.g., Pen. Code, § 1172.1, subd. (a).) Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. (Pen. Code, § 1172.1, subd. (a).) In addition, the Secretary of CDCR, BPH, the county correctional administrator, the district attorney, or the AG can make a recommendation for resentencing at any time. (*Ibid.*)

This bill would allow the court to recall and resentence, on its own motion, at any time (as opposed to within 120 days) if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law.

The current statute specifies the required procedure and guidelines to be followed when requests for recall are made. In particular, a hearing is required to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties the defendant must be appointed counsel, and the court's decision to grant or deny the petition must be stated on the record. (Pen. Code, § 1172.1, subd. (b).) When resentencing is recommended by one of the specified law enforcement entities statutorily authorized to do so, the court must provide notice to the defendant, set a status conference within 30 days of receiving the petition and appoint counsel. A presumption in favor of resentencing applies to petitions submitted by law enforcement entities unless overcome by an unreasonable risk to public safety. (Pen. Code, § 1172.1, subd. (b).)

At resentencing, the current statute allows the court to consider postconviction factors, including the defendant's disciplinary record and record of rehabilitation while incarcerated, evidence reflecting whether age, time served, and diminished physical condition have reduced the defendant's risk of future violence, and evidence of changed circumstances reflecting that incarceration is no longer in the interests of justice. (Pen. Code, § 1172.1, subd. (a)(4).)

This bill would require (instead of allow) the court to consider these factors. Additionally, this bill would specify that evidence that incarceration is no longer in the interests of justice includes the defendant's constitutional rights having been violated in proceedings related to the conviction or sentence and any other evidence undermining the integrity of the conviction or sentence.

Under the current statute, the court is not bound by the terms of an earlier plea agreement when resentencing. (*People v. Pillsbury* (2021) 69 Cal.App.5th 776, 787-788.) However, the new sentence cannot be greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).) If it's in the interests of justice, the resentencing court can reduce the defendant's sentence. Alternatively, the court can vacate the defendant's conviction and impose judgment/sentence on any necessarily included (otherwise known as lesser included) offense or lesser related offense, whether or not it was charged, provided the defendant and the prosecution both concur. (Pen. Code, § 1172.1, subd. (a)(3).)

This bill would delete the requirement that the prosecution concur in order for a court to impose a lesser included or lesser related offense. The requirement that the defendant concur would remain; as it may violate due process were the court to impose an uncharged lesser related offense without the defendant's concurrence. (See *People v. Lohbauer* (1981) 29 Cal.3d 364.)

Lastly, this bill would require the court, after ruling on a request for resentencing under these provisions, to advise the defendant of their right to appeal and the necessary steps and time for taking the appeal.

3) **Marsy's Law:** Among the enumerated rights in Marsy's Law, otherwise known as the California Victims Bill of Rights, is the victim's right to "a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings." (Cal. Const., art. I, § 28, subd. (b)(9).) As noted by the court in *People v. Lamoureux* (2019) 42 Cal.App.5th 241, Marsy's Law "did not foreclose post-judgment proceedings altogether. On the contrary, it expressly contemplated the availability of such postjudgment proceedings, including in section 28, subdivision (b)(7) of the Constitution, which affords victims a right to reasonable notice of 'parole [and] other post-conviction release proceedings," and in subdivision (b)(8), which grants victims a right to be heard at "post-conviction release decision[s] ... .'" (*Id.* at pp. 264-265.)

According to the court in *Lamoureux*, "Both the Legislature and courts have recognized that victims may exercise these rights during postjudgment proceedings that existed at the time the electorate approved Marsy's Law, as well as postjudgment proceedings that did not exist when Marsy's Law was approved ... It would be anomalous and untenable . . . to conclude . . . that the voters intended to categorically foreclose the creation of any new postjudgment proceedings not in existence at the time Marsy's Law was approved simply because the voters granted crime victims a right to a 'prompt and final conclusion' of criminal cases." (*Lamoureux, supra*, 42 Cal.App.5that p. 265 [citations, quotations, footnote omitted].)

4) **Separation of Powers:** This bill would remove the required concurrence of the prosecution for resentencing to a lesser included or lesser related offense. In *People v. Birks* (1998) 19 Cal.4th 108 (*Birks*), the California Supreme Court discussed the separation of powers doctrine as it related to jurors being given instructions to consider lesser related offenses to those charged without the prosecution's concurrence. The Court highlighted that the prosecution controls the charging document and questioned whether instructing on lesser related offenses absent the prosecution's concurrence could be reconciled with the separation of powers clause. The Court, however, did not resolve this issue. (*Id.* at pp. 134-135.)

That being said, this bill would not alter the prosecution's control of charging documents. It would instead allow the court to, in the interest of justice, resentence a defendant to a lesser related offense without the concurrence of the prosecution. The *Birks* decision does not discuss separation of powers in this different context of post-conviction relief.

More recently, the court in *Lamoureux*, *supra*, 42 Cal.App.5th 241 addressed separation of powers in a somewhat more analogous context -- that of a petition to vacate a first degree murder conviction and obtain resentencing under SB 1437 (Skinner), Chapter 1015, Statutes of 2018, as set forth in former Penal Code section 1170.95 (renumbered Pen. Code, § 1172.6). Relief under former section 1170.95 includes allowing the court to vacate a first degree murder conviction and resentence on an uncharged target offense.

The *Lamoureux* court rejected the prosecution's separation of powers arguments that former section 1170.95 usurped the executive's clemency power and impaired the core function of the judiciary. Although noting it was not a sufficient reason on its own for affirming the

constitutionality of former section 1170.95, the court noted the prevalence of such remedial legislation. In the court's view, this "confirm[ed] there is nothing especially unique about section 1170.95, which appear[ed] to [the court] to constitute a legitimate and ordinary exercise of legislative authority." (*Lamoureux, supra*, 42 Cal.App.5th at p. 263.)

The court also noted the fundamental purposes underlying the separation of powers doctrine is that "[p]ower is diffused between coequal branches of government not as an end to itself, but rather to protect the liberty of individuals." (*Lamoureux, supra*, 42 Cal.App.5th at p. 260.) This bill appears similar to SB 1437, in that it would "provide[] potentially ameliorative benefits to the only individuals whose individual liberty interests are at stake in a criminal prosecution—the criminal defendant [themselves]." (*Id.* at p. 261.)

5) **Argument in Support**: According to the *Prosecutors Alliance of California*, the sponsor of this bill, "Nearly 100,000 Californians are currently incarcerated in our overcrowded state prisons. Over a quarter of those people are over the age of 50 and many are serving exceptionally long sentences. Research has shown that criminal involvement diminishes dramatically after an individual reaches 40 years of age (even more after age 50), and that lengthy sentences and high rates of incarceration have diminishing returns in reducing crime rates.

"The recall and resentencing law allows the modification of lengthy sentences when the interests of justice warrant a reduction. Currently, recall and resentence can be recommended by CDCR, Board of Parole Hearings, or the prosecuting agency. This bill would also provide the courts the ability to recall and resentence at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law. This bill would also allow courts to vacate convictions and sentence the individual to a lesser included offense without the concurrence of the prosecuting agency, under certain circumstances.

"These reforms will continue the quest to promote due process and the equitable application of the law, and to ensure that Penal Code Section 1172.1 is applied by the courts as the Legislature intended."

6) **Argument in Opposition**: According to the *California District Attorneys Association*, "The bill modifies Penal Code section 1172.1 (previously Penal Code section 1170.03), which requires District Attorney or Attorney General assent for a court to resentence within 120 days of the commitment. This requirement would be removed, allowing a court, on its own motion, at any time, even after the time period, to recall and resentence if sentencing laws at the time of the original sentence have been changed either by a new statutory authority or case law.

"The bill violates Separation of Powers as well as Marsy's Rights (Cal. Const., art. I, § 28, subd. (a)(6)). Further, it appears to violate Cal. Con. Article VI, section 13:

> No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall

be of the opinion that the error complained of has resulted in a miscarriage of justice.

"The bill does not contain any requirement of a showing of prejudice."

7) **Related Legislation**: AB 88 (Sanchez) would require a court to hold a resentencing hearing if the victim notifies the prosecution of their request to be heard. AB 88 is pending hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

   a) AB 124 (Kamlager), Chapter 695, Statutes of 2021, in relevant part, required courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations.

   b) AB 1540 (Ting), Chapter 719, Statutes of 2021, required the court to provide counsel for the defendant when there is recommendation from CDCR, the BPH, the sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 also created a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of these agencies.

   c) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allowed the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.

   d) AB 1156 (Brown), Chapter 378, Statutes of 2015, provided, in pertinent part, that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

REGISTERED SUPPORT / OPPOSITION:

Support

Prosecutors Alliance California (Sponsor)
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California for Safety and Justice
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for the Innocent
California Public Defenders Association (CPDA)
Communities United for Restorative Youth Justice (CURYJ)
Fresno Barrios Unidos
Initiate Justice
Initiate Justice Action
Last Prisoner Project

Milpa (motivating Individual Leadership for Public Advancement)
Pacific Juvenile Defender Center
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Smart Justice California
Survived & Punished
Uncommon Law
Young Women's Freedom Center

Opposition

California District Attorneys Association

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