California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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

AGENDA

Tuesday, March 21, 2023
9 a.m. -- State Capitol, Room 126

HEARD IN SIGN-IN ORDER

1.	AB 329	Ta	Theft: jurisdiction.
2.	AB 455	Quirk-Silva	Firearms: prohibited persons.
3.	AB 523	Vince Fong	Organized retail theft: cargo.
4.	AB 667	Maienschein	Firearms: gun violence restraining orders.
5.	AB 695	Pacheco	Juvenile Detention Facilities Improvement Grant Program.
6.	AB 697	Davies	Drug Court Success Incentives Pilot Program.
7.	AB 701	Villapudua	Controlled substances: fentanyl.
8.	AB 724	Vince Fong	Firearms: safety certificate instructional materials.
9.	AB 725	Lowenthal	Firearms: reporting of lost and stolen firearms.
10.	AB 742	Jackson	Law enforcement: police canines.
11.	AB 751	Schiavo	Elder abuse.
12.	AB 758	Dixon	Firearms.
13.	AB 763	Davies	Sexually violent predators: conditional release: placement location.
14.	AB 806	Maienschein	Criminal procedure: crimes in multiple jurisdictions.
15.	AB 807	McCarty	Police use of force.
16.	AB 808	Mathis	Crimes: rape.
17.	AB 819	Bryan	Crimes: public transportation: fare evasion.
18.	AB 855	Jackson	Criminal procedure: fines, fees, and restitution.
19.	AB 862	Bauer-Kahan	County jails: recidivism: reports.
20.	AB 881	Ting	Jury duty.
21.	AB 890	Joe Patterson	Controlled substances: probation.
22.	AB 898	Lackey	Juvenile halls.
23.	AB 912	Jones-Sawyer	Strategic Anti-Violence Funding Efforts Act.
24.	AB 943	Kalra	Corrections: population data.
25.	AB 958	Santiago	Prisons: visitation.
26.	AB 977	Rodriguez	Emergency departments: assault and battery.
27.	AB 994	Jackson	Law enforcement: social media.
28.	AB 997	Gipson	Exoneration: mental health services.

29.	AB 1047	Maienschein	Firearms purchase notification registry.
30.	AB 1064	Low	Hate crimes.
31.	AB 1080	Ta	Criminal justice realignment.

COVID FOOTER

SUBJECT:

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

Date of Hearing: March 21, 2023
Counsel: Cheryl Anderson

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

AB 329 (Ta) – As Amended March 13, 2023

SUMMARY: Adds cargo theft to the expanded territorial jurisdiction under which the Attorney General can prosecute specified theft offenses related to retail theft and associated offenses connected together in their commission. Specifically, **this bill**:

1) Adds cargo theft to the expanded territorial jurisdiction which authorizes the Attorney General to prosecute theft, organized retail theft, and receiving stolen property offenses to include the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense.

2) Adds cargo theft to the expanded territorial jurisdiction that authorizes the Attorney General to prosecute multiple offenses of theft, organized retail theft, or receipt of stolen property, that all involve the same defendant or defendants and the same merchandise or the same scheme or substantially similar activity, and occur in multiple jurisdictions, in any of those jurisdictions.

3) Adds cargo theft to the extended territorial jurisdiction that authorizes the Attorney General to prosecute all associated offenses connected together in their commission to the underlying theft offenses.

EXISTING LAW:

1) Provides that generally the territorial jurisdiction (or venue) of a criminal offense is in any competent court in the county where the offense was committed. (Pen. Code, § 777.)

2) Provides that when a criminal offense is committed partially in one county and partially in another, then jurisdiction is proper in either county. (Pen. Code, § 781.)

3) Provides that when a criminal offense is committed on the boundary of two or more counties, or within 500 yards thereof, territorial jurisdiction is proper within either county. (Pen. Code, § 782.)

4) Expands the territorial jurisdiction for a criminal action brought by the Attorney General for theft, organized retail theft, receipt of stolen property to include the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. (Pen. Code, § 786.5.)

5) Provides that when multiple offenses of theft, organized retail theft, or receipt of stolen property that all involve the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper venue for all of the offenses. (Pen. Code, § 786.5.)

6) Extends jurisdiction to all associated offenses connected together in their commission to the underlying theft offenses. (Pen. Code, § 786.5.)

7) Establishes a number of special territorial jurisdictional rules for specified criminal offenses. (Pen. Code, § 783 *et. seq.*)

8) States that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. (Pen. Code, § 484, subd. (a).)

9) Creates the crime of organized retail theft which is defined as:

    a) Acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value;

    b) Acting in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen;

    c) Acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft; or,

    a) Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake these acts of theft. (Pen. Code, § 490.4, subd. (a).)

10) States that any person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained is guilty of receiving or concealing stolen property. (Pen. Code, § 496, subd. (a).)

11) Provides that every person who steal, takes, or carries away cargo of another, if the value of the cargo taken exceeds $950, is guilty of grand theft. (Pen. Code, § 487h, subd. (a).)

12) Defines "cargo" as any goods, wares, products or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit. (Pen. Code § 487h, subd. (b).)

13) Defines "cargo container" as a receptacle with strong enough for repeated use, designed to facilitate the carriage of goods, fitted for handling from one mode of transport to another,

designed to be easy to fill and empty, and having a cubic displacement of 1,000 cubic feet or more. (Pen. Code, § 458.)

14) Provides that every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home, railroad car, locked or sealed cargo container, house car, inhabited camper, locked vehicle, aircraft, or mine with attempt to commit theft or any felony is guilty of burglary. (Pen. Code, § 459.)

15) Establishes a procedure for charging more than one count or offense in a single accusatory pleading. (Pen. Code, § 954.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 329 would assist California businesses frustrated with organized cargo theft's impacts. Whether burglaries happen at transportation truck yards or driver giveaways, where a driver participates in the conspiracy to steal a loaded rig, grab and run, often used by theft groups targeting trucks loaded with high-tech equipment or warehouse stolen cargo.

   "AB 329 gives the tools to the Attorney General to stop this sophisticated cargo theft that is destroying our California businesses which are hurting the most from the global pandemic that we're all trying to recover from. This bill also reduces the need for multiple trials by allowing the Attorney General the ability to consolidate cases involving conduct in multiple counties."

2) **Cargo Theft:** During the Covid-19 pandemic, cargo thefts from railyards made headlines.[1] Cargo theft can also apply to theft from cargo trucks.

---

[1] Notably, Union Pacific's (UP) train thefts started right around the time it laid off thousands of workers. According to UP's annual reports to the federal Surface Transportation Board, the company ended 2019 with 23,096 employees. In 2020, that number fell to 20,334. And that number fell again to 18,408 in the third quarter of 2021. (*Quarterly Wage A&B Data*, Surface Transportation Board. <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>.) According to the Los Angeles Times, former UP employees and police say budgetary issues have slashed the ranks of the company's force, leaving as few as half a dozen in the region. *('Like A Third World Country': Gov. Newsom Decries Rail Thefts amid Push to Beef up Enforcement,* Los Angeles Times (Jan. 20, 2022) <https://www.latimes.com/california/story/2022-01-20/los-angeles-rail-theft-supply-chain-crunch-limited-security>.) "Union Pacific from Yuma, Ariz., to L.A. has six people patrolling…" and "thefts started about seven months ago as the police presence ebbed." (*Ibid.*) UP's employment numbers remain low, despite record profits for the rail operator. UP reported a net income of $6.5 billion for 2021. (*Union Pacific Reports Fourth Quarter and Full Year 2021 Results,* UP (Jan. 2022) <https://www.up.com/media/releases/4q21-earnings-nr210120.htm>.)

Over the summer, a two-year investigation resulted in the arrest of 5 persons in Los Angeles County who reportedly stole $9 million in cargo from shipments of electronics in an operation that spanned the state. Electronics and electronic components were recovered, including products from Google, Hewlett Packard, Samsung, Dell, Microsoft, Apple, and various other companies. (https://www.cbsnews.com/sanfrancisco/news/chp-cargo-theft-arrests-electronics/; https://abc7.com/cargo-theft-operation-california-electronic-shipments-stolen-chp-arrests-google/12169291/.)

Earlier this year, a representative from CargoNet stated that cargo theft numbers were starting to return to pre-Covid levels but had seen a recent uptick. The representative noted, however, there had been a shift in focus from rail-car theft which targeted consumer electronic products to thefts of food and beverages. (https://www.claimsjournal.com/news/national/2023/01/30/315034.htm.)

3) **Territorial Jurisdiction and Vicinage**: Territorial jurisdiction is the location in which a case may be brought to trial. Ordinarily, the territorial jurisdiction of a superior court is the county in which it sits. (Pen. Code, § 691, subd. (b).) The general rule of territorial jurisdiction is stated in section 777: "except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed." When the Legislature creates an exception to the rule of section 777, the statute is remedial and is construed liberally to achieve the legislative purpose of expanding criminal jurisdiction. (*Price v. Superior Court* (2001) 25 Cal.4th 1046, 1055.)

   Vicinage is the right to trial by a jury drawn from residents of the area where the offense was committed. Venue and vicinage are closely related, as a jury pool is selected from the area in which the trial is to be held. Vicinage is not a necessary feature to the right of a jury trial as guaranteed by the Sixth Amendment to the United States Constitution because it "does not serve the purpose of protecting a criminal defendant from government oppression and is not necessary to ensure a fair trial." (*Price, supra,* 25 Cal. 4th 1046, 1065-1069.) This does not mean that a state has the right to try a defendant anywhere it chooses. Rather, the right of vicinage in California is derived from the right to jury trial as guaranteed in the California Constitution. (*Id.* at p. 1071.) As the Supreme Court explained, the right to a trial by a jury of the vicinage, as guaranteed by the California Constitution, requires trial in a county that has a reasonable relationship to the offense or to other crimes committed by the defendant against the same victim. Thus, the Legislature's power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense. (*Id.*at p. 1075.)

   This bill would expand jurisdiction to prosecute cargo theft offenses for criminal actions brought by the Attorney General, extending a jurisdictional provision in current law that is directed at organized and repeated retail theft.

4) **Previous Expansion of Jurisdiction for Organized Retail Theft**: AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, among other things, created the crime of organized retail theft and expanded jurisdictional rules for theft offenses. AB 1065 had a sunset date of January 1, 2021. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft through 2025, but the jurisdictional provisions of AB 1065 were specifically not included.

Last year, AB 1613 (Irwin), Chapter 949, Statutes of 2022, once again expanded jurisdiction to prosecute theft offenses, but only for criminal actions brought by the Attorney General. In particular, AB 1613 expanded the territorial jurisdiction for a criminal action brought by the Attorney General for the crimes of theft, organized retail theft, or receipt of stolen property. It allowed for trial in any county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. It also expanded jurisdiction to any one of the counties in which multiple theft offenses occurred involving the same defendant(s) and same merchandise, or the same defendant(s) and the same scheme or substantially similar activity. And it applied the expanded jurisdiction to any associated offenses connected together in their commission to the underlying theft offenses. (Pen. Code, § 786.5.)

The extended jurisdiction in AB 1613 was intended to cover the limited circumstances of organized and repeated thefts from retailers. This bill would further expand the jurisdiction in which the Attorney General can prosecute theft cases, by amending Penal Code section 786.5 to include cargo theft offenses. The supply chain is not a retailer.

Further, under this jurisdictional provision, the court is not required to consider the location and complexity of the evidence, the rights of the defendant, the convenience of, or hardship to, the victim(s) and witnesses, or the racial composition of the county in which the cases will be consolidated (the jury pool). (See *United States v. Salinas* (2004) 373 F.3d 161, 163 [resultant safety net from proper venue and vicinage ensures that a criminal defendant cannot be tried in an "unfriendly forum solely at the prosecutor's whim."]; see also Lisa E. Alexander, *Vicinage, Venue, and Community Cross-Section: Obstacles to a State Defendant's Right to a Trial by a Representative Jury*, 19 Hastings Const. L.Q. 261, 290 (1991) ["Venue and vicinage define the community against which courts will assess the minority representation in the jury pool for constitutional purposes."].)

5) **Attorney General's Expanded Role in Combatting Organized Retail Theft**: In December 2021, Governor Newsom announced a proposal to combat organized retail theft. Part of the plan included $18 million to support the creation of a dedicated investigative team within the state Attorney General's office focusing on retail theft that crosses jurisdictional lines. (https://www.gov.ca.gov/2021/12/17/governor-newsom-unveils-public-safety-plan-to-aggressively-fight-and-prevent-crime-in-california/)

   The Governor's 2022-2023 budget allocated $11 million annually for three years and $5.5 million ongoing for the Department of Justice to continue leading anti-crime task forces around the state. This funding also support regional task forces combatting organized retail theft and prosecution of retail theft cases that span multiple jurisdictions. (https://ebudget.ca.gov/budget/publication/#/e/2022-23/BudgetSummary.)

   AB 1613 was consistent with these efforts, as it specifically authorized the Attorney General's office to prosecute theft and retail theft crimes that span multiple jurisdictions in any one of those counties.

6) **The California Constitution Authorizes the Attorney General to Prosecute Criminal Actions:** The Attorney General is the state's top prosecutor and is authorized to initiate

prosecutions at his discretion. "Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office." (Cal. Const., Art. V, Sec. 13.)

The Attorney General currently has the authority to prosecute cargo theft.

7) **Rail Theft Enforcement and Prosecution:** In December 20, 2021, UP sent a letter to Los Angeles County District Attorney George Gascón, regarding train thefts and security concerns and urging more aggressive prosecution. (https://www.up.com/cs/groups/public/@uprr/@newsinfo/documents/up_pdf_nativedocs/pdf_up_la_district_atty_211221.pdf.) Los Angeles District Attorney George Gascón responded, as follows:

> "In response to your letter, we conducted a thorough review of cases submitted for filing consideration over the last three years in which UP is listed as a victim. In order to appropriately respond to your concerns, we wanted to know the actual data behind your claims, so we can address the issues. Here are the numbers: In 2019, 78 cases were presented for filing. In 2020, 56 cases were presented for filing. And in a sharp decline, in 2021, 47 such cases were presented for filing consideration, and over 55% were filed by my Office. The charges filed included both felony and misdemeanor offenses alleging burglary, theft, and receiving stolen property. Of the 20 cases that were declined for filing, 10 were not filed due to the insufficiency of the evidence presented to prove the case beyond a reasonable doubt, which is our ethical standard to file a criminal case. The other 10 declined matters involved offenses such as allegations of unhoused individuals within 20 feet of the railroad tracks and simple possession of drugs for personal use—not allegations of burglary, theft, or tampering. Although homelessness is a serious issue, it is not one that we can fix through expending resources of the criminal legal system.
>
> "To be clear, felony and misdemeanor cases are filed where our Office is presented with enough evidence to prove that a crime was committed. We understand how vital the rail system is to Los Angeles County and the entire nation and want to work with you in a productive manner to ensure that those who tamper with or steal from UP are held accountable. As more Americans engage in e-commerce and rely on our transportation infrastructure to receive goods, it is important that our work to ensure the safety of this system is collaborative. Part of this collaboration involves taking preventative steps to ensure that cargo containers are secure or locked. Furthermore, UP has its own law enforcement officers who are responsible for patrolling and keeping areas safe. However, according to LAPD Deputy Chief Al Labrada, UP does little to secure or lock trains and has significantly decreased law enforcement staffing. It is very telling that other major railroad operations in the area are not facing the same level of

> theft at their facilities as UP. We can ensure that appropriate cases are filed and prosecuted; however, my Office is not tasked with keeping your sites secure and the District Attorney alone cannot solve the major issues facing your organization."

(https://da.lacounty.gov/sites/default/files/pdf/Letter-to-Union-Pacific-012122.pdf.) As discussed above, if the Attorney General disagrees with District Attorney Gascon's assessment of these cases, he is authorized to have his office prosecute them.

8) **Argument in Support**: According to the *California Trucking Association*, "California consumers, truck drivers, and businesses will benefit from extended protections under the Attorney General. This bill expands the Attorney General's jurisdiction to bring criminal action against anyone who steals cargo over $950 from a trailer, railcar, or cargo container. Safe and secure cargo transportation is important to our economy, and this bill will play a crucial role in protecting the rights and interests of truckers and shipping companies.

"Cargo theft is a serious problem that has been on the rise in recent years. According to the National Insurance Crime Bureau, cargo theft costs the United States economy billions of dollars every year and California has the highest amount of reported cargo theft1. Cargo theft not only harms businesses financially, but it also endangers the safety of truck drivers who are often the victims of these crimes."

9) **Argument in Opposition**: None applicable.

10) **Related Legislation**:

a) AB 523 (Fong), would expand the crime of organized retail theft to include merchandise stolen from a merchant's cargo. AB 523 is pending hearing in this committee today.

b) AB 806 (Maienschein), would expand the scope of domestic violence offenses occurring in multiple jurisdictions that are subject to joinder. AB 806 is pending hearing in this committee today.

11) **Prior Legislation**:

a) AB 1613 (Irwin), Chapter 949, Statutes of 2022, expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to those theft offenses.

b) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft until to January 1, 2026, but did not include the expanded jurisdictional provisions.

c) SB 304 (Hill), Chapter 206, Statutes of 2019, allowed specified elder and dependent adult abuse offenses that occur in different jurisdictions to be consolidated in a single trial if all district attorneys in the counties with jurisdiction agree.

d) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft, established a property crimes task force, and expanded jurisdictional

provisions for theft offenses.

e) AB 1746 (Cervantes), Chapter 962, Statutes of 2018, added sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses.

f) AB 368 (Muratsuchi), Chapter 379, Statutes of 2017, added felony sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger occurring in two or more jurisdictions to the list of applicable offenses that may be consolidated in a single trial.

g) SB 939 (Block), Chapter 246, Statutes of 2014, permitted the consolidation of human-trafficking-related charges occurring in different counties to be joined in a single trial if all the district attorneys agree.

h) AB 2252 (Cohn), Chapter 194, Statutes of 2002, amended territorial jurisdiction of sex crimes to remove the requirement that consolidated offenses involve a single victim, and added specified crimes to the list of applicable charges.

i) AB 2734 (Pacheco), Chapter 302, Statutes of 1998, permitted jurisdiction for specified offenses, such as spousal abuse and stalking, occurring in two or more jurisdictions in any jurisdiction where at least one offense occurred, if the defendant and the victim were the same for all the offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California Trucking Association

Opposition

Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Defy Ventures
Drug Policy Alliance
Initiate Justice
Initiate Justice Action
Last Prisoner Project
Miracles Counseling Center
Rubicon Programs
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Seeds for Youth Development
Universidad Popular

2 Private Individuals

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

Date of Hearing: March 21, 2023
Counsel: Liah Burnley

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

AB 455 (Quirk-Silva) – As Introduced February 6, 2023

SUMMARY: Prohibits individuals who complete pretrial mental health diversion from having a firearm. Specifically, **this bill**:

1) Prohibits individuals who were charged with any felony or a misdemeanor domestic violence offense, and who have completed mental health diversion, from purchasing, receiving, or having in their custody or control any firearm or deadly weapon for the remainder of their life.

2) Prohibits individuals who were charged with specified misdemeanors, including but not limited to assault, battery, and criminal threats, and who have completed mental health diversion, from purchasing, receiving, or having in their custody or control any firearm or deadly weapon for a period of 10 years.

EXISTING FEDERAL LAW:

1) States that the right of the people to keep and bear arms shall not be infringed. (U.S. Const., 2nd Amend.)

2) Provides that no state shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const., 14th Amend.)

EXISTING STATE LAW:

1) States that a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws. (Cal. Const. art. I, § 7.)

2) Permits, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court, in its discretion, to grant pretrial mental health diversion to a defendant if the defendant satisfies the eligibility requirements and the court determines that the defendant is suitable for that diversion. (Pen. Code, § 1001.36, subd. (a).)

3) Defines "Pretrial diversion" as the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment. (Pen. Code, § 1001.36, subd. (f).)

4) Provides that a defendant is eligible for pretrial mental health diversion if both of the following criteria are met:

a) The defendant has been diagnosed with a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia; and,

b) The defendant's mental disorder was a significant factor in the commission of the charged offense. (Pen. Code, § 1001.36, subd. (b).)

5) Provides that a defendant is suitable for pretrial mental health diversion if all of the following criteria are met:

a) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment;

b) The defendant consents to diversion and waives the defendant's right to a speedy trial;

c) The defendant agrees to comply with treatment as a condition of diversion; and,

d) The defendant will not pose an unreasonable risk of danger to public safety, if treated in the community. (Pen. Code, § 1001.36, subd. (c).)

6) States that a defendant may not be placed into a pretrial mental health diversion program for the following offenses:

a) Murder or voluntary manslaughter;

b) An offense for which a person, if convicted, would be required to register as a sex offender;

c) Rape;

d) Lewd or lascivious act on a child under 14 years of age;

e) Assault with intent to commit rape, sodomy, or oral copulation;

f) Commission of rape or sexual penetration in concert with another person;

g) Continuous sexual abuse of a child; or,

h) Using a weapon of mass destruction, as specified. (Pen. Code, § 1001.36, subd. (d).)

7) Provides that, at any stage of the proceedings, the court may require the defendant to make a prima facie showing that they will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. (Pen. Code, § 1001.36, subd. (e).)

8) States that the period during which criminal proceedings against the defendant may be diverted is limited as follows:

   a) If the defendant is charged with a felony, the period shall be no longer than two years.

   b) If the defendant is charged with a misdemeanor, the period shall be no longer than one year. (Pen. Code, § 1001.36, subd. (f).)

9) Provides that, if any of the following circumstances exists, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated, the treatment should be modified, or the defendant should be referred to the conservatorship investigator of the county:

   a) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence;

   b) The defendant is charged with an additional felony allegedly committed during the pretrial diversion;

   c) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion; or,

   d) Based on the opinion of a qualified mental health expert, the defendant is performing unsatisfactorily in the assigned program or the defendant is gravely disabled. (Pen. Code, § 1001.36, subd. (g).)

10) Provides that, if the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. (Pen. Code, § 1001.36, subd. (h).)

11) States that, upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted, except as specified. The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified. (Pen. Code, § 1001.36, subd. (h).)

12) States that a record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.36, subd. (i).)

13) Requires that the defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

   a) The arrest upon which the diversion was based may be disclosed by the Department of Justice (DOJ) to any peace officer application request and the defendant is not relieved

of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer; and

b) An order to seal records pertaining to an arrest has no effect on a criminal justice agency's ability to access and use those sealed records and information regarding sealed arrests. (Pen. Code, § 1001.36, subd. (j).)

14) Provides that a finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant's treatment, or any other records related to a mental disorder that were created as a result of participation in, or completion of, diversion may not be used in any other proceeding without the defendant's consent, except as specified. (Pen. Code, § 1001.36, subd. (k).)

15) Permits specified individuals to request that a court, after notice and a hearing, issue a gun violence restraining order (GVRO) enjoining a person from having a firearm, for a period of time between one to five years, upon a finding that the person poses a significant danger of causing personal injury to themselves or another by having a firearm. (Pen. Code, §§ 18170 et seq.)

16) Provides that any person subject to a domestic violence restraining order (DVRO) shall not own, possess, purchase, or receive a firearm or ammunition while that order is in effect. (Fam. Code, § 6389, subd. (a).)

17) Provides that the following individuals shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control a firearm or any other deadly weapon:

a) Any person who has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender;

b) Any person who has been found not guilty by reason of insanity;

c) Any person found by a court to be mentally incompetent to stand trial;

d) Any person who has been placed under conservatorship by a court because they are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism;

e) Any person who has been taken into custody, assessed and admitted into a facility, as provided in Section 5150 of the Welfare and Institutions Code because that person is a danger to themselves or to others; and,

f) Any person who has been certified for intensive treatment as a result of mental disorder or impairment by chronic alcoholism because that person is a danger to themselves or to others. (Welf. & Inst. Code, § 8103, subds. (a)-(g).)

18) States that whenever a person listed above, is found to own, have in their possession or under their control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who

shall retain custody of the firearm or other deadly weapon. (Welf. & Inst. Code, § 8102, subd. (a).)

19) Provides that every person who owns or possesses or has under their custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of these provisions shall be punished by imprisonment in the county jail for 16 months, two, or three years pursuant to realignment or in a county jail for not more than one year. (Welf. & Inst. Code, § 8103 subd. (i).)

20) Provides that any person who knowingly supplies, sells, gives, or allows possession or control of a deadly weapon to any of the persons listed above shall be punishable by imprisonment pursuant to realignment, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars ($1,000), or by both. (Welf. & Inst. Code, § 8101, subd. (a).)

21) Provides that any person who knowingly supplies, sells, gives, or allows possession or control of a firearm to any person listed above shall be punished by imprisonment pursuant realignment of the Penal Code for two, three, or four years. (Welf. & Inst. Code, § 8101, subd. (b).)

22) Provides that any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. (Pen. Code, § 29800, subd. (a)(1).)

23) Punishes specified acts of domestic violence as a wobbler (alternatively as a misdemeanor or a felony). (Pen. Code, § 273.5.)

24) Prohibits any person convicted of a specified misdemeanor domestic violence offense from owning, purchasing, receiving, or having in their possession or under custody or control, any firearm. (Pen. Code, § 29805 subd. (b).)

25) Requires the Attorney General to establish and maintain an online database, the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm, and who, after the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code, § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The vast number of people who suffer from mental illness do not act out violently or commit crimes. However, individuals who have been charged with specified criminal offenses who choose to participate in a mental health diversion program, should also adhere to post-conviction gun restrictions to the same extent as those convicted of the same crime."

2) **Mental Health Diversion:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

   In order to be eligible for pretrial mental health diversion, the defendant must suffer from a mental disorder, that played a significant role in the commission of the charged offense, and in the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment. The defendant must consent to diversion, waive their right to a speedy trial, and must agree to comply with treatment as a condition of diversion. The court must be satisfied that the defendant will not pose an unreasonable risk of danger to public safety if treated in the community. (Pen. Code, § 1001.36, subd. (b)(1).) A defendant can participate in mental health diversion for felony and misdemeanor offenses; but the defendant may not be charged with specified crimes, including murder and offenses requiring sex offender registration. (Pen. Code, § 1001.36, subd. (b)(2).)

   Courts have discretion to refuse to grant diversion even though the defendant meets all of the requirements. (J. Couzens, *Memorandum RE: Mental Health Diversion (Penal Code §§ 1001.35-1001.36) (AB 1810 & SB 215) [revised]* (Nov. 14, 2018), p. 4.) If the defendant performs unsatisfactorily on diversion, because the defendant fails to participate in treatment or engages in criminal conduct, the court may reinstate criminal proceedings. If criminal proceedings are reinstated, the case would be resolved through the criminal system in the ordinary course of business. (Pen. Code, § 1001.36.)

   If the defendant has performed satisfactorily on diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. (Pen. Code, § 1001.36.)

3) **Unjust Stigmatization of Mental Illness:** In 2020, an estimated 52.9 million adults in the United States had some form of mental illness. (National Institute of Mental Health (NIH), *Mental Illness* <https://www.nimh.nih.gov/health/statistics/mental-illness> [as of March 8, 2023].) Blanket prohibitions such as the one in this bill have the potential to unjustly stigmatize individuals based solely on their mental illness. Media coverage often and increasingly links mass shootings with serious mental illness, however, there is a lack of evidence connecting mental health conditions to violent acts and argues that mental illness gun bans do nothing more than reinforce the harmful trope that people living with a mental health condition are intrinsically dangerous. (McMahon S., *Gun Laws and Mental Illness: Ridding the Statutes of Stigma* (2020) 5 J. L. & Public Affairs 2.) Laws which "prohibit people with certain indicia of mental health conditions from purchasing or possessing firearms, fail at their supposed goal of preventing guns from getting into the hands of dangerous people. They define the prohibited group in ways that both include many

individuals who will never be violent and exclude many individuals who pose a risk. Moreover, this focus on mental illness distracts lawmakers from traits that better predict violence, such as past violent acts and substance abuse." (*Ibid*)

4) **The Individuals Affected by This Bill Do Not Necessarily Pose a Danger by Virtue of Possessing a Firearm:** In order to participate in mental health diversion the court must find that the defendant suffers from a mental disorder as identified in the most recent edition of the DSM. Attention Deficit Hyperactivity, communication disorder, sleep-wake disorder, obsessive compulsive disorder, are all mental disorders under the DSM. However, the fact that a defendant suffers from such a mental disorder does not mean they are a danger to the public or a danger to themselves. To be eligible for mental health diversion, the court must find that the person is *not a risk to public safety*, will respond to treatment, and could not have been charged with offenses such as murder or specified sex offenses. (Pen. Code, § 1001.36, subd. (b)(1).) And, mental health providers must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (c)(1).) Further, if the defendant fails to participate in treatment or engages in criminal conduct, the court may reinstate criminal proceedings. (Pen. Code, § 1001.36.)

   This bill would require any person who is charged with a felony or misdemeanor domestic violence and granted mental health diversion be prohibited from owning or possessing a firearm or deadly weapon upon completion of diversion. This bill would not require the court to make a finding that the individual should be prohibited because they would be a danger to themselves or others if they possess a firearm or other weapon. The defendant would not be entitled to a hearing, have no right to request a hearing on the matter. Further, the prohibition would exist for the person's entire lifetime, if the offense was a felony or misdemeanor domestic violence, or a period of 10 years for a misdemeanor after the successful completion of diversion. An individual would not be entitled to petition the court to remove the prohibition. This bill would result in a firearm prohibition even if the defendant was ultimately acquitted of the underlying charges. These issues raise due process concerns related to a right established by the Constitution.

5) **Constitutional Concerns**: The Second Amendment of the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed. The Second Amendment establishes an individual right for U.S. citizens to possess firearms. (*District of Columbia v. Heller* (2008) 478 F.3d 370.) The Second Amendment applies to the states. (*McDonald v. City of Chicago* (2010) 567 F.3d 856.)

   The Fourteenth Amendment of the United States Constitution, prohibits the deprivation of "life, liberty, or property" by state governments without due process of law. This includes the deprivation of rights within a specific prohibition of the Constitution, such as the first 10 Amendments. (*United States v. Carolene Products Co.* (1938) 304 U.S. 144 (1938), fn. 4.) Thus, the State cannot deprive a person of their Second Amendment right to keep and bear arms, without due process of law. (*McDonald v. City of Chicago* (2010) 567 F.3d 856.)

   At minimum, due process requires government officials to follow fair procedures before depriving a person of their rights. The state must afford the person, at minimum, notice, an opportunity to be heard, and a decision made by a neutral decisionmaker. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267.) This bill provides no such protections. Indeed, in every other context where the state can prohibit a person from having a firearm due to their mental

health, the person is afforded at least some due process procedure:

- **Mental disorder, mental illness, or mentally disordered sex offender.** Requires adjudication by a court finding the person to be a danger to others as a result of a mental disorder or mental illness. Permits a certificate by the court, upon release from treatment or at a later date, stating that the person may possess a firearm or any other deadly weapon without endangering others. (Welf. & Inst. Code, § 8103, subd. (a).)

- **Not guilty by reason of insanity.** Requires a court finding that the person is not guilty by reason of insanity. Permits, in some circumstances, the court to find the person to have recovered sanity and is no longer prohibited. (Welf. & Inst. Code, § 8103, subds. (b) & (c).)

- **Mentally incompetent to stand trial.** Requires a court finding that the person is mentally incompetent to stand trial. Permits the court to find the person is no longer prohibited due to restoration of their competence to stand trial. (Welf. & Inst. Code, § 8103, subd. (c).)

- **Conservatorship.** Requires a court finding that possession of a firearm by the person would present a danger to the safety of the person or to others. Permits the court to find that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others. (Welf. & Inst. Code, § 8103, subd. (e).)

- **Mental health admission pursuant to Welfare and Institutions Code section 5150**. The person must be taken into custody, assessed, and admitted to a mental health facility because they are a danger to themselves or others. The person is entitled to request a court hearing for an order permitting them to have a firearm. The prosecution has the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. & Inst. Code, § 8103, subd. (f).)

- **Certified for intensive mental health treatment.** The person must be certified, by a professional mental health provider, that they are a danger to others or themselves and are gravely disabled. The person is entitled to request a court hearing for an order permitting them to have a firearm. The prosecution has the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. & Inst. Code, § 8103, subd. (g).)

In comparison, this bill would not require any finding that a person should not own a firearm, and provides no opportunity for a person to challenge the prohibition or restore their right to own a firearm. As such, it could infringe on the Second and Fourteenth Amendment rights of persons who participate in mental health diversion.

The Legislature should consider whether a person who chooses pretrial mental health diversion, and has been adjudicated not to be a risk to public safety, should be automatically

prohibited from owning firearms without any individualized assessment of their potential to hurt themselves or others, and without regard for their constitutional rights.

These constitutional concerns deserve close consideration given that the effected individuals have not been found guilty of an offense and are in mental health treatment.

6) **Existing Law Permits Law Enforcement to Seek GVROs**: The process to obtain an emergency GVRO is designed to address situations where a person presents a current danger to themselves or others by virtue of owning or possessing a firearm. An application for an emergency GVRO can be made orally and processed immediately. (Pen. Code, § 18170.) Current law allows an immediate family member of a person or a law enforcement officer to request a court, after notice and a hearing, to issue a GVRO enjoining the subject of the petition from having in their custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of time from one to five years. (*Ibid.*)

   Nothing about a person's participation in mental health diversion would prohibit a law enforcement officer from seeking a GVRO against an individual that presents a danger by virtue of owning a firearm.

7) **Existing Law Requires Relinquishment of a Firearm by a Person Subject to a DVRO:** To the extent this bill is aimed at people who commit misdemeanor domestic violence offenses, existing law requires relinquishment of a firearm by a person subject to a DVRO. (Fam. Code, § 6389.) Upon issuance of a restraining order, the court is required to order the respondent to relinquish any firearm in their immediate possession or control. (Fam. Code, § 6389, subd. (c)(1).)

   A conviction is not a prerequisite for an issuance of a DVRO and nothing about a person's participation in mental health diversion would prohibit a court from issuing a DVRO against an individual. (See Fam. Code, § 6320 [permitting the issuance of a DVRO at the discretion of the court, upon on a showing of good cause].)

8) **Policy Considerations Related to the Armed Prohibited Persons System**: The Armed and Prohibited Persons Systems (APPS) database cross-references firearms purchasers against other records for individuals who are prohibited from owning or possessing firearms. The DOJ Bureau of Firearms (Bureau) utilizes Crime Analysts, Special Agents, and Special Agent Supervisors to locate and seize firearms from prohibited persons identified through the APPS database. (DOJ, *2021 Armed and Prohibited Persons System Annual Report to the Legislature* <https://oag.ca.gov/system/files/media/2021-apps-report.pdf> [as of March 2, 2023.])

   Prohibitions may be due to a felony conviction, domestic violence conviction, a qualifying misdemeanor conviction, mental health-based event, various types of civil or criminal restraining orders, as well as other prohibitory categories. Between 2013 and 2021, changing laws have introduced new offenses that prohibit firearm ownership and/or possession, placing a growing number of individuals into the Prohibited Armed Persons File. (DOJ, *supra, 2021 Armed and Prohibited Persons System Annual Report to the Legislature.)* Accordingly, DOJ built up a backlog of prohibited persons DOJ needed to investigate. As of January 1, 2022, the APPS database contained 3,199,394 individuals, of which 24,509 were prohibited from owning or possessing firearms. (*Ibid.*) As of January 1, 2022, there were

10,033 Active cases and 14,476 Pending cases. (*Ibid.*) In 2021, 8,937 armed and prohibited people were removed from the APPS database. At the same time, 9,848 prohibited persons were added to the APPS database. (*Ibid.*)

This bill would add another category of individuals to APPS—notably individuals who do not present an unreasonable public safety risk, are under the court's jurisdiction, and are receiving treatment. (Pen. Code, § 1001.36, subds. (b)(1) & (c)(1).) Given the current APPS backlog, should the Legislature consider prioritizing relinquishment of firearms from individuals who have been adjudicated to be a public safety risk?

9) **Argument in Support**: According to the *California District Attorneys Association* (CDAA), "Mental health diversion was adopted in 2018 with the express purpose of increasing diversion of individuals with mental disorders while protecting public safety. Since then, counties have seen a significant increase in the number of criminal defendants who suffer from mental illness choosing to be diverted under this statute. However, under current law if a defendant successfully completes diversion, the criminal case is dismissed and no post-conviction firearm restriction applies. AB 455 will prohibit an individual who chooses mental health diversion from possessing a gun for the same amount of time as if they had been convicted of the underlying crime."

10) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "Under existing section 1001.36, when a person is accused of a crime they may, *even if innocent of that crime*, agree to pause the case, accept mental health services as approved by the court and, if they comply with those services for up to two years, seek dismissal of their case. (§ 1001.36.)

"Section 1001.36 serves a vital role by allowing Californians to accept mental health services without pleading to an offense they did not commit, thereby addressing the root causes of any conduct that brought them to the attention of the court, enhancing public safety, and avoiding the long-term stigmatization associated with mental health treatment and criminal proceedings.

"AB 455 undercuts this vital function by requiring courts to treat any person who accepts mental health services under section 1001.36 as if they have been convicted of committing a crime. Under its auspices, any person who accepts treatment– *innocent or not*–would be forever banned from owning a weapon for the rest of their lives. Worse, any person who violates this restriction, even if they did so without knowing that this restriction existed, would be subject to felony prosecution and a jail or prison sentence of up to three years.

"In so doing, AB 455 turns the presumption of innocence on its head, and places Californians who accept treatment for conditions like PTSD, battered-woman syndrome, depression, alcohol use, or drug use into a category reserved for those whose guilt has been proven beyond a reasonable doubt to a jury.

"In addition, AB 455:

- *Stigmatizes those who accept treatment* for a mental health condition by treating any person who accepts services as if they are a danger to the public, a claim thoroughly debunked by every study and mental health organization to study the issue. (See, e.g.,

https://www.ncbi.nlm.nih.gov/books/NBK537064/ [people living with mental illness are more likely to be the victim of crime than the perpetrator].)

- *Discourages the acceptance of treatment* by imposing lifetime self-defense bans against Californians who have not committed any crime or have not been found guilty of committing any crime but will nonetheless be placed in the same category as a convicted criminal or "sex offender" as described in Welfare Institutions Code § 8103.

- *Threatens the livelihood of Californians* whose profession requires them to be armed. A security guard, for example, falsely accused of vandalism may be willing to accept treatment for any underlying mental health condition but cannot do so if by accepting treatment he will lose his employment.

- *Prevents Californians with genuine safety concerns from defending themselves.* Our clients, for example, routinely include battered-women defendants who have every reason to be worried about assault by an ex-partner. Under AB 455, these presumptively innocent clients who have not been convicted of any offense would be barred from possessing a firearm for self-defense, for no reason other than that they agreed to accept treatment.

- *Appears to be unconstitutional.* While no legislative body has previously attempted to impose a life-time weapons ban on a person simply because they were *accused* of a crime and thereafter accepted mental health treatment, it is likely that such a law would be unconstitutional. (See, e.g., *Tyler v. Hillsdale County Sheriff's Department, et al.* (2016) 837 F.3d 678, 688 [permanent firearm ban based on fact that a person previously struggled with mental illness is likely unconstitutional].)"

11) **Related Legislation**:

a) AB 667 (Mainschein), would increase the renewal period to a maximum of 10 years, instead of 5, for GVROs if the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm. AB 667 is pending hearing in this Committee.

b) AB 1412 (Hart), would permit individuals with borderline personality disorder to participate in mental health diversion. AB 1412 is pending referral by Rules.

12) **Prior Legislation**:

a) AB 1121 (Bauer-Kahan), of the 2019-2020 Legislative Session, would have prohibited a person who is granted pretrial diversion based on a mental health disorder from owning or possessing a firearm, or other dangerous or deadly weapon, and included hearing procedures to reinstate the person's right to own a firearm. AB 1121 was held on the Assembly Appropriation's Suspense File.

b) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of a gun violence restraining order issued after notice and hearing and renewals to a maximum of five years.

c) AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, established mental health diversion.

d) AB 1968 (Low), Chapter 861, Statutes of 2018, required that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings.

e) AB 3129 (Rubio), Chapter 883, Statutes of 2018, prohibited a person who is convicted of misdemeanors relating to domestic violence against possessing a firearm.

f) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have prohibited a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. SB 755 was vetoed by the Governor.

g) AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a GVRO as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California State Sheriffs' Association
San Mateo County District Attorney's Office

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Dbsa California

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

Date of Hearing: March 21, 2023
Counsel: Liah Burnley

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

AB 523 (Vince Fong) – As Introduced February 7, 2023

SUMMARY: Expands the crime of organized retail theft to include merchandise stolen from a merchant's cargo.

EXISTING LAW:

1) States that a person who commits any of the following acts is guilty of organized retail theft:

   a) Acts in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value;

   b) Acts in concert with two or more persons to receive, purchase, or possess merchandise as defined, knowing or believing it to have been stolen;

   c) Acts as an agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of an organized plan to commit theft; or,

   d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of these acts or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a).)

2) Punishes organized retail theft, as follows:

   a) If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950, the offense is punishable as an alternate felony-misdemeanor (a "wobbler");

   b) Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

   c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable as a wobbler. (Pen. Code, § 490.4, subd. (b).)

3) States that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense,

defrauds any other person of money, labor or real or personal property, is guilty of theft. (Pen. Code, § 484, subd. (a).)

4) Provides that every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home, railroad car, locked or sealed cargo container, house car, inhabited camper, locked vehicle, aircraft, or mine with attempt to commit theft or any felony is guilty of burglary. (Pen. Code, § 459.)

5) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950. (Pen. Code, § 487.)

6) Provides that the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

7) Provides that every person who steal, takes, or carries away cargo of another, if the cargo is taken of a value exceeding $950, is guilty of grand theft. (Pen. Code, § 487h, subd. (a).)

8) Defines "cargo" as any goods, wares, products or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit. (Pen. Code § 487h, subd. (b).)

9) Defines "cargo container" as a receptacle with strong enough for repeated use, designed to facilitate the carriage of goods, fitted for handling from one mode of transport to another, designed to be easy to fill and empty, and having a cubic displacement of 1,000 cubic feet or more. (Pen. Code, § 458.)

10) Provides that every person who destroys any part of a railroad, including any structure or fixture attached to or connected with any railroad, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one year, or a felony, punishable by imprisonment in county jail for a period of 16 months, two, or three years. (Pen. Code, § 489, subd. (c)(1).)

11) Makes it a felony, punishable by imprisonment in a county jail for a term of two, three, or four years, to obstruct a railroad track. (Pen. Code, § 218.1.)

12) Makes trespass on a railroad or any transit related property a misdemeanor. (Pen. Code, § 369i.)

13) Provides that any railroad police officer, as specified, are peace officers whose authority extends to any place in the State for the purpose of performing their primary duty or when making an arrest. (Pen. Code, § 830.33, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Theft is on the rise, and the costs are passed onto Californians. Businesses are hit in their stores, and also up and down the supply chain – from trains to cargo containers. AB 523 modernizes the state's response to organized retail theft to include where other acts of theft are committed. Protecting the supply chain strengthens the state's economy and guarantees families have access to day-to-day essentials."

2) **Organized Retail Theft**: AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, among other things, created the crime of organized retail theft and expanded jurisdictional rules for theft offenses. AB 1065 had a sunset date of January 1, 2021. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft through 2025.

   This bill would unnecessarily enlarge the organized retail theft statute, which was intended to cover the limited circumstances of theft of merchandise from a merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value. The supply chain is not a retailer. Moreover, property in cargo is not in all cases "merchandise."

3) **Existing Law Allows for Increased Penalties for Cargo Theft**: To the extent this bill is aimed at increasing penalties for thefts, there are currently a number of laws that prosecutors can use to charge cargo theft that call for increased penalties. Grand theft of property (including cargo) valued over $950 is already chargeable as a felony offense, punishable by imprisonment in county jail for a period of 16 months, two or three years. (Pen. Code, § 489, subd. (c)(1).) Also, any person who steals, takes, or carries away cargo of another, if the cargo is taken of a value exceeding $950, is guilty of grand theft. (Pen. Code, § 487h, subd. (a).) And, any person who enters any railroad car or locked or sealed cargo container with attempt to commit theft or any felony is guilty of burglary, which is a felony, punishable by imprisonment in county jail for a period of 16 months, two or three years. (Pen. Code, §§ 459; 461, subd. (b).)

   In instances where the property stolen from cargo is less than $950, the crime is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 6 months, or both. (Pen. Code, § 490.) If a person trespasses on a railroad or any transit related property during the commission of the offense, they can be charged with an additional misdemeanor. (Pen. Code, § 369i.) If a person trespasses on a railroad with intent to commit robbery, they can be subject to imprisonment of a term of not more than twenty years under federal law. (18 U.S.C. § 1991.)

   Existing law also allows for increased penalties for thefts less than $950, for example by aggregation of theft offenses. Repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (*People v. Bailey* (1961) 55 Cal.2d 514, 518-519 (*Bailey*).)

   Moreover, under California law, if two or more persons conspire to commit any crime, even misdemeanor petty theft, they can be charged with a felony for the conspiracy itself. Thus, any time there is more than one person involved in any act of cargo theft the offense can be charged as felony conspiracy, regardless of the value of the items stolen. (Pen. Code, § 182.)

In sum, cargo theft is already a crime and there are already many legal options for charging cargo thefts with increased penalties.

4) **Railroad Cargo Theft**: According to background materials provided by the author, "Representatives from the Union Pacific Railroad indicated that rail thefts experienced a 160% increase in 2021 compared to 2020. The throttling of the supply chain, compounded by increased gas prices, climbing inflation, and rising interest rates put additional pressure on the economy. Unfortunately, this also spurred increased activity in the illicit market: household goods and electronics were the most stolen commodities in 2022."

In California, railroad police officers have general peace officer authority. (Pen. Code, § 830.33, subd. (e).) Under federal law, railroad police have interstate authority; they can enforce the laws of any jurisdiction in which the rail carrier owns property to protect patrons of the rail carrier, property, equipment and facilities, personnel, equipment and material moving by rail, and property moving in interstate or foreign commerce in the possession of the rail carrier. (49 U.S.C. § 28101.)

The Union Pacific Police Department is the law enforcement agency of Union Pacific's (UP) railroad. The first UP special agents were hired during the "Hell on Wheels" era to protect cargo from train robbers in the Wild West. (*Union Pacific Special Agents: The Badges Behind the Shield,* UP (April 2016). https://www.up.com/aboutup/community/inside_track/badges-04-11-2016.htm [as of March 8, 2023].) According to UP, the Union Pacific Police Department has primary jurisdiction over crimes committed against the railroad. The department is responsible for all UP locations across 32,000 miles of track in 23 states. (*Ibid.*) UP police have full police authority and are responsible for crimes that include trespassing on railroad rights of way, theft of railroad property, threats of terrorism and derailments, well as investigate public safety incidents which occur on railroad property. They often work with local, state, and federal law enforcement agencies on issues concerning the railroad. (*Ibid.*) Union Pacific special agents and local law enforcement officers have overlapping jurisdictions, but UP railroad property is the Union Pacific Police Department's responsibility. (*Ibid.*)

In December 20, 2021, UP sent a letter to Los Angeles County District Attorney George Gascón, regarding train thefts and security concerns. The letter states, in part:

> "Since December 2020, UP has experienced an over 160% increase in criminal rail theft in Los Angeles County. In several months during that period, the increase from the previous year surpassed 200%. In October 2021 alone, the increase was 356% over compared to October 2020. Not only do these dramatic increases represent retail product thefts – they include increased assaults and armed robberies of UP employees performing their duties moving trains. …
>
> "This increased criminal activity over the past twelve months accounts for approximately $5 million in claims, losses and damages to UP. And that value does not include respective losses to our impacted customers. Nor does it capture the larger operating or commercial impacts to the UP

network or supply chain system in Los Angeles County.

> "In response to this increased, organized, and opportunistic criminal activity, UP by its own effort and cost enlisted additional and existing Special Agents across the UP system to join our local efforts with LAPD, LASD and CHP to help prevent the ongoing thefts. We have also utilized and are further exploring the use of additional technologies to help us combat these criminals through drones, specialized fencing, trespass detection systems, and other measures."

(*Letter from Union Pacific Railroad* (Dec. 20, 2021) <https://www.up.com/cs/groups/public/@uprr/@newsinfo/documents/up_pdf_nativedocs/pdf_up_la_district_atty_211221.pdf>.)

Notably, UP's train thefts started right around the time it laid off thousands of workers. According to UP's annual reports to the federal Surface Transportation Board, the company ended 2019 with 23,096 employees. In 2020, that number fell to 20,334. And that number fell again to 18,408 in the third quarter of 2021. (*Quarterly Wage A&B Data*, Surface Transportation Board. <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>.) According to the Los Angeles Times, former UP employees and police say budgetary issues have slashed the ranks of the company's force, leaving as few as half a dozen in the region. *('Like A Third World Country': Gov. Newsom Decries Rail Thefts amid Push to Beef up Enforcement,* Los Angeles Times (Jan. 20, 2022) <https://www.latimes.com/california/story/2022-01-20/los-angeles-rail-theft-supply-chain-crunch-limited-security>.) "Union Pacific from Yuma, Ariz., to L.A. has six people patrolling…" and "thefts started about seven months ago as the police presence ebbed." (*Ibid.*) UP's employment numbers remain low, despite record profits for the rail operator. UP reported a net income of $6.5 billion for 2021. (*Union Pacific Reports Fourth Quarter and Full Year 2021 Results,* UP (Jan. 2022) <https://www.up.com/media/releases/4q21-earnings-nr210120.htm>.)

In response to UP's letter, Los Angeles District Attorney George Gascón stated:

> "In response to your letter, we conducted a thorough review of cases submitted for filing consideration over the last three years in which UP is listed as a victim. In order to appropriately respond to your concerns, we wanted to know the actual data behind your claims, so we can address the issues. Here are the numbers: In 2019, 78 cases were presented for filing. In 2020, 56 cases were presented for filing. And in a sharp decline, in 2021, 47 such cases were presented for filing consideration, and over 55% were filed by my Office. The charges filed included both felony and misdemeanor offenses alleging burglary, theft, and receiving stolen property. Of the 20 cases that were declined for filing, 10 were not filed due to the insufficiency of the evidence presented to prove the case beyond a reasonable doubt, which is our ethical standard to file a criminal case. The other 10 declined matters involved offenses such as allegations of unhoused individuals within 20 feet of the railroad tracks and simple possession of drugs for personal use—not allegations of burglary, theft, or tampering. Although homelessness is a serious issue, it is not one that we can fix through

expending resources of the criminal legal system.

"To be clear, felony and misdemeanor cases are filed where our Office is presented with enough evidence to prove that a crime was committed. We understand how vital the rail system is to Los Angeles County and the entire nation and want to work with you in a productive manner to ensure that those who tamper with or steal from UP are held accountable. As more Americans engage in e-commerce and rely on our transportation infrastructure to receive goods, it is important that our work to ensure the safety of this system is collaborative. Part of this collaboration involves taking preventative steps to ensure that cargo containers are secure or locked. Furthermore, UP has its own law enforcement officers who are responsible for patrolling and keeping areas safe. However, according to LAPD Deputy Chief Al Labrada, UP does little to secure or lock trains and has significantly decreased law enforcement staffing. It is very telling that other major railroad operations in the area are not facing the same level of theft at their facilities as UP. We can ensure that appropriate cases are filed and prosecuted; however, my Office is not tasked with keeping your sites secure and the District Attorney alone cannot solve the major issues facing your organization."

(*Letter from George Gascón, Los Angeles County District Attorney*, (Jan. 21, 2022) <https://da.lacounty.gov/sites/default/files/pdf/Letter-to-Union-Pacific-012122.pdf>.)

Further, railroad police such as UP work with both local, state and federal law enforcement agencies. (*Policing America's Railroads,* Mission Critical Communications (Sept. 2014)<https://www.npstc.org/download.jsp?tableId=37&column=217&id=3198&file=RR_Police_IO_Mission_Critical_Comm_Sept_2014.pdf> .) Thus, UP police can seek federal assistance and prosecution under federal law.

5) **Argument in Support**: According to *California Trucking Association,* "Due to the pandemic and transition to at home working life, the demand for ordering online goods mailed directly to a residence has risen to unexpected levels. This has resulted in record levels of packages being delivered to Californian's doorsteps every day. The surge in consumer demand also brings an alarming rate of organized package theft hurting both carriers delivering the goods and consumers receiving their packages on time.

"Package thefts at a Union Pacific Railyard in Los Angeles highlighted the need to hold offenders responsible for their actions. Many of our members utilize the railyards to transport their customer's packages into, out of, or within California. The goods movement sector is already experiencing delivery delays due to supply chain woes, and replacing stolen packages will contribute to congestion."

6) **Argument in Opposition**: According to *California Public Defenders Association* (CPDA) "AB 528 would add 'cargo; to the definition of 'organized retail theft' in Penal Code section 490.4, subdivision (a)(1). This would be an unwarranted departure from the existing definition of that crime, which has remained unchanged ever since Section 490.4's inception by AB 1065 (Stats. 2019, Ch. 803), effective January 1, 2019. 'Organized retail theft' has always been defined as theft (or related offenses, and under specified circumstances), from

'one or more merchant's *premises or online marketplace*.' (Italics added).

"When the original Penal Code section 490.4 was about to sunset, it was re-enacted without relevant change, by AB 331 (Stats. 2021, Ch. 113), as urgency legislation effective July 21, 2021. The definition of 'organized retail theft' was unchanged.

"The change proposed by AB 523, the addition of 'cargo' to that definition, is unwarranted for two reasons. The first reason is that the legislature had already separately outlawed the theft of cargo whose value exceeds $950, in Penal Code section 487h. Adding 'cargo' to the definition of 'organized retail theft' would result in considerable overlap of the two sections, thus making the Penal Code even more confusing and hard to apply than it already is.

"The second reason is more important: adding 'cargo' to the definition of 'organized retail theft' would substantially change the evil at which Penal Code section 490.4 is carefully tailored to reach and would sweep in offenses that were not originally intended.

"Currently, Penal Code section 490.4 is aimed at premises and online marketplaces. It provides increased penalties for gangs or groups who swarm into a place of business to steal en mass; or who, even if only one person enters, plan as a group to commit theft in a place of business; or who commit similar computer offenses.

"But 'cargo' is defined as 'any goods, wares, products, or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit.' (Penal Code section 487h, subdivision (b).) This does not require a premises where retail business is conducted, nor an online marketplace; it thus departs substantially from the place of business that Penal Code section 490.4 is tailored to protect."

7) **Related Legislation**: AB 329 (Ta), would expand the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 will be head by this Committee today.

8) **Prior Legislation**:

   a) AB 2543 (Fong), of the 2021-2022 Legislative Session, would have made burglary with regard to a railroad car or a cargo container punishable by imprisonment in a county jail for two, four, or six years. AB 2543 was not heard in this committee at the request of the author.

   b) AB 2769 (O'Donnell), of the 2021-2022 Legislative Session, would have made burglary of a cargo container, railroad car, or cargo, where the property stolen or damaged is valued over $950, a felony offense. AB 2769 was not heard in this committee at the request of the author.

   c) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft, established a property crimes task force, and expanded jurisdictional provisions for theft offenses.

d) AB 2805 (Olsen), of the 2015-2016 Legislative Session, would have created a cargo theft prevention working group coordinated by the California Highway Patrol. AB 2805 was vetoed.

e) SB 24 (Oropeza), Chapter 607, Statutes of 2009, eliminated the sunset date on cargo theft, and clarified that the elements of cargo theft are the same as other forms of grand theft.

f) AB 1814 (Oropeza), Chapter 515, Statutes of 2004, created a specific statute providing that the theft of cargo of a value in excess of $400 is grand theft and contained a sunset date of January 1, 2010.

REGISTERED SUPPORT / OPPOSITION:

Support

Calchamber
California Association of Highway Patrolmen
California Retailers Association
California State Sheriffs' Association
California Trucking Association
El Dorado County Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Lincoln Area Chamber of Commerce
National Insurance Crime Bureau
Peace Officers Research Association of California (PORAC)
Rancho Cordova Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Chamber of Commerce
United Chamber Advocacy Network
Yuba Sutter Chamber of Commerce

Opposition

California Public Defenders Association (CPDA)
Initiate Justice

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

Date of Hearing: March 21, 2023
Chief Counsel: Sandy Uribe

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

AB 667 (Maienschein) – As Introduced February 13, 2023

SUMMARY: Extends the duration of gun violence restraining order (GVRO) renewals from a maximum of five years to a maximum of ten years.

EXISTING LAW:

1) Defines a GVRO as an order in writing, signed by the court, prohibiting and enjoining a named person from having in their custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, § 18100.)

2) Requires a petition for a GVRO to describe the number, types, and locations of any firearms and ammunition that the petition believes the subject of the petition possesses. (Pen. Code, § 18107.)

3) Requires the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. Code, § 18115.)

4) Prohibits a person that is subject to a GVRO from having in their custody or control any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)

5) Requires the court to order the restrained person to surrender all firearms and ammunition in their control. (Pen. Code, § 18120, subd. (b)(1).)

6) States that an officer serving a GVRO shall immediately request the surrender of all firearms and ammunition. Alternatively, if law enforcement does not make a surrender request, the person must surrender them within 24 hours of being served with the GVRO, as specified. (Pen. Code, § 18120, subd. (b)(2).)

7) Allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

   a) The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and

   b) A temporary GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a).)

8) States that a temporary GVRO shall expire 21 days from the date it is issued. (Pen. Code, § 18125, subd. (b).)

9) Allows an immediate family member, an employer, a coworker, an employee or teacher of a secondary or post-secondary school, law enforcement officer, a roommate, an individual who has a dating relationship or a child in common with the subject of the petition to file a petition requesting that the court issue an ex parte GVRO enjoining a person from possessing, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

10) Allows a court to issue an ex parte GVRO on a showing of good cause that the subject of the petition poses a significant risk of injury to themselves, or to another by having under their custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors, and that the order is necessary to prevent personal injury to the subject of the petition or to others. (Pen. Code, §§ 18150, subd. (b), & 18155.)

11) Enumerates factors which the court must and may consider in making a determination that grounds for a GVRO exist. (Pen. Code, § 18155, subd. (b).)

12) States that an ex parte GVRO shall expire 21 days from the date the order is issued. (Pen. Code, § 18155, subd. (c).)

13) Entitles the restrained person to a hearing to determine the validity of the order within 21 days after the date on the order. (Pen. Code, § 18165.)

14) Allows an immediate family member, an employer, a coworker, an employee or teacher of a secondary or post-secondary school, law enforcement officer, a roommate, an individual who has a dating relationship or a child in common with the subject of the petition to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from possessing, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18170.)

15) States that at the hearing, the petitioner has the burden to establish by clear and convincing evidence that the person poses a significant danger of causing injury to themselves or to another by possessing, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury. (Pen. Code, § 18175, subd. (b).)

16) Provides that the court shall issue a GVRO for a period between one to five years, subject to termination and renewal. (Pen. Code, § 18175, subd. (e)(1).)

17) Requires the court to consider the length of time that the subject poses a significant danger of causing injury to self or others and the time it is necessary to prevent injury because less restrictive alternatives have either been tried and found to be ineffective or are inadequate or inappropriate under the circumstances. (Pen. Code, § 18175, subd. (e)(2).)

18) Allows a restrained person to file one written request per year for a hearing to terminate the order. (Pen. Code, §18185.)

19) Allows a request for renewal of a GVRO at any time within three months of its expiration. (Pen. Code, § 18190, subd. (a)(1).)

20) Allows the same individuals who can petition for a GVRO to petition for a renewal. The person need not have sought the original GVRO. (Pen. Code, § 18190, subds. (a)(1) & (5).)

21) Requires the petitioner make the same showing as an original petition for a GVRO to be made by clear and convincing evidence. (Pen. Code, § 18190, subds. (b) & (d).)

22) Provides that the renewal shall have a duration of between one year and five years. (Pen. Code, § 18190, subd. (f)(1).)

23) States that every person who files a petition for a GVRO knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

24) Makes a violation of a GVRO a misdemeanor. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California has proved that it is possible to reduce gun violence through legislative action. In the last decade, we have passed nearly 100 laws aimed at reducing gun violence and these efforts have kept us below the national average of gun deaths. Still, too many individuals find themselves in situations where legal protections are necessary. Gun violence restraining orders serve as useful tool for law enforcement and families across the state to help keep firearms out of the hands of individuals who pose a risk to either themselves or others. AB 667 furthers current protections for victims by extending the duration of a gun violence restraining order from five years to ten years."

2) **Gun Violence Restraining Orders**: California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

   The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night.

   In contrast, an immediate family member[1], an employer, a coworker[2], an employee or teacher of a secondary or post-secondary school[3], law enforcement officer, a roommate, an

---

[1] "Immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or

individual who has a dating relationship or a child in common[4] with the subject of the petition can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to five years. In determining for how long to issue the GVRO the court will be required to consider two things: whether the person poses a significant danger of causing injury to self or others; and, whether the GVRO is necessary to prevent such injury. To balance the due process rights of the individual restrained the person is allowed to request a hearing for termination of the order on an annual basis.

As to the permissible duration of GVROs after notice and a hearing, it should be noted when GVROs were first established by AB 1014 (Skinner), Chapter 872, Statutes of 2014, a GVRO issued after notice and a hearing had the duration of one year. Effective September 2020, AB 12 (Irwin), Chapter 724, Statutes of 2019, allowed the court to issue GVROs for up to five years. AB 12 also extended the maximum length of GVRO renewals for up to 5 years.

This bill does not change the maximum duration of an original GVRO; original GVROs after notice and a hearing remain capped at up to five years. This bill would change the duration of GVROs renewals, allowing them to last between one and ten years, based on the court's determination of how long the person might continue to pose a significant danger of causing injury to self or others. Because the five-year limit has only been in effect for about a year and a half, any five-year orders have not even lapsed. Accordingly, this change seems premature. There has been no showing that the current five-year renewal length will be insufficient.

In determining for how long to issue a GVRO renewal, the court is required to consider two things: (1) the length of time that a person poses a significant danger of causing injury to self or others by owning, purchasing, or possessing a firearm; and (2) that the GVRO is necessary to prevent that injury because less restrictive alternatives either have been tried and been ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, §

---

affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year. (Pen. Code, § 18150, subd. (a)(3).)

[2] A coworker must have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer. (Pen. Code, § 18150, subd. (a)(1)(C)).

[3] The subject of the petition must have attended in the last six months. (Pen. Code, § 18150, subd. (a)(1)(D)).

[4] An individual who has a child in common with the subject of the petition must have had substantial and regular interactions with the subject for at least one year. (Pen. Code, § 18150, subd. (a)(1)(H)).

18190, subds. (b)& (d).) A decade is a long time. Circumstances change over time. In most cases a court cannot possibly know that the subject of the petition will continue to pose a significant danger to themselves or others.

3) **Data on the Lengths of GVROs**: Courts are required to notify the Department of Justice (DOJ) when a GVRO is issued. (Pen. Code, § 18115.) When GVROs were first enacted, the maximum duration for such an order was one year. AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years, commencing in September 2020. (See Pen. Code, § 18175, subd. (e)(1).) DOJ has informed this committee that from the period of September 1, 2020 through December 31, 2022, the duration of GVROs issued after a hearing are as follows:

Duration of GRVO	9/1/2020-12/31/2022
0-1 year	386
1-2 years	52
2-3 years	69
3-4 years	84
4-5 years	271
5+ years[5]	14

Although there have been a significant number of 4-5 year GVROs issued since AB 12 went into effect, these orders have not lapsed, and petitions for renewal on these orders have not yet been filed.

4) **Argument in Support**: According to the *California District Attorneys Association*, "California courts are permitted to prohibit and enjoin a person from having custody or control of any firearms or ammunition if the person poses a significant danger of causing personal injury to themselves or another by having custody or control of a firearm or ammunition. Current law authorizes a court to issue a gun violence restraining order for a period of one to five years, with a possible renewal period for an additional one to five years if the person poses a significant danger of self-harm or harm to another in the near future by having a firearm and the order is necessary to prevent personal injury to the subject of the petition or another.

"AB 667 increases the renewal period to a maximum of 10 years. By ensuring that individuals who are found by a court to pose a significant danger to themselves or others from having a firearm for longer, AB 667 helps keep our communities safe from gun violence."

5) **Argument in Opposition**: According to the *National Rifle Association*, "Denial of constitutional rights is a serious matter that requires proper due process and strong objective supporting data. Currently GVRO's can be issued for a period of one to five years and extended without limitation. Allowing GVROs to extend beyond one year is a recent change,

[5] It is unclear why any GVROs have been issued for more than five years, as existing law currently limits the duration to a maximum of five years.

signed into law in 2019 (AB 12). This change made California an outlier for this class of protective orders. AB 667 compounds California's outlier status, by extending the potential duration of a GVRO to ten years. The unfortunate reality is that an individual can be placed in a constant restrained state without ever being convicted of a crime or adjudicated mentally ill, but based on third party allegations.

"By extending the duration of a GVRO, the restrained will be burdened with making the request to appeal the order (allowable once a year) and saddled with the legal costs associated with such a request. Further, the appeal process seems to shift the burden to the restrained to show that the standard can no longer be achieved for the order. This may prove difficult in many instances where a respondent is forced to show that third party allegations no longer exist. Whereas orders of shorter duration places the burden on the petitioner to meet the evidentiary standard for the order to be granted/extended.

"AB 667, like the preceding legislation extending the period of time for orders, fails to provide any clear guidance on how a judge is to determine the length of a GVRO. It should be noted that if an individual is truly dangerous, existing law already provides a variety of mechanisms to deal with the individual, all of which can lead to firearm prohibitions in appropriate cases. The issuance of a protective order does nothing to deal with the underlying cause of dangerousness, nor does it subject the person to any actual physical restraint, ongoing reporting or monitoring requirements, or treatment for any underlying mental health condition.

"AB 667 will have the effect of acting as a false security blanket. Again, this legislation would leave truly dangerous individuals free to commit their crimes with illegal firearms, explosives and anything else that sick individuals might use to commit heinous crimes. Unfortunately, AB 667 will only further promote the denial of fundamental civil liberties."

6) **Related Legislation**:

   a) AB 301 (Bauer-Kahan), would allow the court to consider the acquisition of body armor as a factor in determining whether to issue a GVRO. AB 301 is pending hearing in the Assembly Appropriations Committee.

   b) SB 762 (Becker), states intent to further strengthen and expand GVRO provisions. SB 762 is in the Senate Rules Committee.

7) **Prior Legislation**:

   a) AB 2870 (Santiago), Chapter 974, Statutes of 2022, further expanded the category of persons that may file a petition requesting a court to issue a GVRO.

   b) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years.

   c) AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the persons who could petition for a GVRO to include an employer, a coworker, as specified, and an employee or teacher of a secondary school, or postsecondary school, as specified.

d) AB 1014 (Skinner), Chapter 872, Statutes of 2014, allowed the court to issue a GRVO and established the process by which the orders can be obtained.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California District Attorneys Association

Opposition

National Rifle Association

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

Date of Hearing: March 21, 2023
Chief Counsel: Sandy Uribe

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

AB 695 (Pacheco) – As Introduced February 13, 2023

As Proposed to be Amended in Committee

SUMMARY: Establishes the Juvenile Detention Facilities Improvement Grant Program to address the inadequate and dilapidated state of county juvenile detention facilities. Specifically, **this bill**:

1) Establishes the Juvenile Detention Facilities Improvement Grant Program within the Office of Youth and Community Restoration to provide grants, pursuant to this chapter, to a county of the first class to address the critical infrastructure needs of the state's supervised youth who are detained in county facilities.

2) Defines "county of the first class" as "counties containing a population of 4,000,000 and over."

3) Requires the office to award grants based on the priorities for infrastructure improvement.

4) Requires the office to establish minimum standards, funding schedules, and procedures for awarding the grants which shall prioritize the projects with the highest critical infrastructure need.

5) States that to be eligible for the grants, a county of the first class must prepare a facilities improvement plan for the expenditure of funds for capital improvements that are necessary to preserve and protect the county's juvenile detention facilities to enhance each facility's rehabilitation function.

6) Provides that funds shall only be used for:

   a) Newly-constructed living space for youths;

   b) Projects that would modernize housing units and sleeping rooms to comply with existing building standards; or

   c) Which provide rehabilitative or educational programming for youths.

7) States that facility improvements made as part of this grant program cannot result in a new increase in county rated capacity.

8) Requires the office to submit a report to the Legislature, on or before January 1, 2025, detailing the grants awarded and the projects funded through the program.

9) Appropriates an unspecified amount from the General Fund for purposes of providing grants under this program.

10) States that a special statute is necessary because of the unique need to address the significant problems of inadequate and dilapidated juvenile facilities in Los Angeles County.

11) Contains legislative findings and declarations, and a statement of legislative intent.

EXISTING LAW:

1) Requires the board of supervisors in every county to provide and maintain, at county expense, in a location approved by the presiding judge of the juvenile court, a suitable house or place for the detention of wards and dependent children of the juvenile court and of persons alleged to come within the jurisdiction of the juvenile court. Such house or place shall be known as the "juvenile hall." (Welf. & Inst. Code, § 850.)

2) Provides that juvenile halls shall not be deemed to be, nor be treated as, penal institutions and that juvenile halls shall be safe and supportive homelike environments. (Welf. & Inst. Code, § 851.)

3) States that the juvenile hall shall be under the management and control of the probation officer. (Welf. & Inst. Code, § 852.)

4) Requires the Board of State and Community Corrections (BSCC) to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. (Welf. & Inst. Code, § 210.)

5) Establishes the Office of Youth and Community Restoration (OYCR) in the California Health and Human Services Agency, whose mission is to promote trauma responsive, culturally informed services for youth involved in the juvenile justice system that support their successful transition to adulthood and help them become responsible, thriving, and engaged members of the community. (Welf. & Inst. Code, § 2200, subds. (a) & (b).)

6) Requires the OYCR to have an ombudsman who shall have the authority to investigate complaints from youth, families, staff, and others about harmful conditions or practices, violations of law and regulations governing facilities, and circumstances presenting an emergency. (Welf. & Inst. Code, § 2200, subd. (d).)

7) Defines "physical confinement" as placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home, or in a secure youth treatment facility, or in any institution operated by the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ). (Welf. & Inst. Code, § 726, subd. (d)(5).)

8) Authorizes the juvenile court judge, when a minor is adjudged a ward of the court, to commit the minor to a juvenile home, ranch, camp, or forestry camp. If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to

the county juvenile hall. (Welf. & Inst. Code, § 730, subd. (a)(1).)

9) Provides that on or after July 1, 2021, a ward of the juvenile court shall not be committed to the DJJ, except as specified. (Welf. & Inst. Code, § 733.1, subd. (a).)

10) Defines "secure youth treatment facility" as a secure facility that is operated, utilized, or accessed by the county of commitment to provide appropriate programming, treatment, and education for wards having been adjudicated for specified offenses. (Welf. & Inst. Code, § 875, subd. (g)(1).)

11) Provides that all juvenile justice grant administration functions in the BSCC shall be moved to the OYCR no later than January 1, 2025. (Welf. & Inst. Code, § 2200, subd. (f).)

12) Establishes the Regional Youth Programs and Facilities Grant program, which appropriates $9,600,000 to award one-time grants to counties for the purposes of providing resources for infrastructure related needs and improvements to counties. (Welf. & Inst. Code, § 2200, subds. (a).)

13) Establishes the Juvenile Justice Realignment Block Grant program for the purpose of providing county based custody, care, and supervision of youth who are realigned from the DJJ. (Welf. & Inst. Code, § 1990.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Los Angeles Probation Department is staffed by thousands of dedicated public servants who have committed their professional lives to achieving successful outcomes for the youth they serve. However, with independent reports dating back ten years outlining the critical need for major infrastructure improvements and current research forming the bases of a true trauma-informed care model, it is well past the time to make substantial renovations. Further, it is past time to modernize the training of probation officers to assure that they have the skills necessary to provide care-first, trauma informed rehabilitative services for youth and young adults remanded to their care by the courts.

   "The Los Angeles Probation Department's juvenile detention facilities are badly outdated and in need of critical renovations with almost all of its physical plants in significant dilapidation. In their current state, LA Probation facilities are not adequate to meet the basic State law requirement of a "homelike" environment much less meet the current care-first, intensive rehabilitation model that juvenile justice requires.

   "It is our responsibility to ensure that every possible effort is made to provide a positive outcome for youth that have been remanded to the care of our probation department. This measure exposes an honest and blunt truth: the tools and facilities are hindering the ability to provide the care these kids deserve.

   "Assembly Bill 695 will ensure that our justice-involved youth have the tools needed for

their rehabilitation – they deserve no less."

2) **Condition of Los Angeles County Juvenile Halls**: There are currently two juvenile halls operating in Los Angeles County Central Juvenile Hall in central Los Angeles and Barry J. Nidorf in Sylmar. In 2013-2014, the Los Angeles County Civil Grand Jury inspected the conditions of the faclities at the county's juvenile halls, including both Central and Nidorf. (See *Maintenance Issues and Living Conditions at Juvenile Halls, 2013-2014 Los Angeles County Civil Grand Jury Final Report*, (hereinafter CGY Report), p. 179, 2013-2014_Final.pdf (la.ca.us) [as of March 12, 2023].)

The Central Juvenile Hall is the oldest of the juvenile facilities operated in Los Angeles County. The Central Juvenile Hall complex was originally established in 1912 as the first juvenile detention facility in Los Angeles County. (CGY Report, *supra*, p. 183.) An *inspection of the girls secured housing unit, revealed:*

> [C]eiling tiles in the corridor had been removed and not replaced. One cell in the Girls SHU [special handling unit] was uninhabited due to leaking pipes that seeped water into the corridor. Bath towels and duct tape were used in a futile attempt to repair broken pipes and prevent seepage. There was an indistinct foul odor in the hallway suggesting that sewage or stagnant water was present. (*Id.* at pp. 183-184.)

As to the boys SHU, the report noted, "The Boys SHU was clean but poorly lighted. Windows were etched so severely that it was impossible to see inside some of the individual cells, none of which had toilets or sinks." (*Id.* at p. 184.)

The grand jury report called for the facilities to be torn down and a new facility built in its place:

> Central Juvenile Hall is in severe disrepair. It is a financial drain on the maintenance budget of the Probation Department. Constant need for repairs of basic utilities and infrastructure is costly. Rather than keeping the site operational through on-going remedial repairs, the Probation Department would save money and better serve the minors with a modern facility. Replacing the facility would alleviate safety issues caused by the present dilapidated buildings. (*Id.* at p. 185.)

Barry J. Nidorf Juvenile Hall houses both general population minors as well as minors classified as high-risk offenders. (CGY Report, *supra*, p. 186.) According to a letter submitted by the sponsors of this bill, Nidorf Juvenile Hall "is the largest and most jail-like County-run youth juvenile facility in the nation." When the Civil Grand Jury inspected the facilities in 2013, it found, "The housing units visited by the sub-committee were clean and sanitary. Showers were operable and void of mold and soap residue. The units that housed minors were configured in a dorm setting with a central intake area where initial processing occurs." (*Id.* at p. 186.) [1] Several of the housing units were being painted at the time and new beds which were constructed without bars to prevent suicides were being installed. (*Id.* at p. 187.) The inspection reported noted that some areas needed attention, including repairs to

[1] It should be noted that some of the cells at Nidorf also do not have toilets.

the flooring in both the girls and boys gyms, as well as holes, erosion, and rust on the roof throughout the facilities. (*Ibid.*)

3) **Juvenile Justice Facilities Requirements**: California juvenile facilities must comply with physical plant and facility requirements set forth in California Code of Regulations Title 15 (Minimum Standards for Local Detention Facilities) and Title 24 (Building Standards Code). The physical plant requirements for juvenile halls are dependent on when the facility was activated - some facilities have to comply with the 1998 version of Title 24, others have to comply with more recent versions. Counties that choose to close their halls, even if only temporarily, may have to comply with more updated regulations if they decide to reopen. (*See Juvenile Justice Facilities in California: Report and Toolkit*, California State Association of Counties, Nov. 2019, p. 22.)

   The Central Juvenile Hall in Los Angeles was temporarily shut down by the probation department when it was facing a re-inspection by the BSCC that it knew it would fail after reviewing footage from security cameras in the facility. BSCC previously had made a determination that the hall was out of compliance with several regulations and had been deemed unsuitable for housing youth. (See *'We're Screwed': L.A. County Empties Troubled Juvenile Hall Ahead of State Board's Inspection*, J. Queally, Los Angeles Times, March 16, 2022, https://www.latimes.com/california/story/2022-03-16/la-county-empties-central-juvenile-hall-ahead-of-state-inspection [as of March 13, 2023].) Beginning in February 2021, Central Juvenile Hall had been found to be out of compliance with regulations, which required development of a corrective action plan. During re-inspection, BSCC investigators found additional areas of non-compliance.[2] The BSCC advised the probation department that it would be conducting another re-inspection in March of 2022. However, before the re-inspection, the probation department told the BSCC that it was suspending operations for 90 days and transferring the youth to Barry J. Nidorf juvenile hall so that it could "assist in facilitating leadership changes, training for staff and needed repairs to the facility." (See BSCC finds LA Central Unsuitable, June 9, 2022, https://www.bscc.ca.gov/news/bscc-finds-la-central-unsuitable/ [as of March 13, 2023].)

   Given the age of Central Juvenile Hall, it is unclear whether that temporary shutdown or suspension in operations by the probation department may have triggered compliance with the more recent version of Title 24's building standards if it is to continue to house minors.

4) **Recent Funding Provided to the Counties for Facility Improvements**: SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020 began the closure of DJJ, realigning those state functions to county governments. Under SB 823, DJJ intake closed for most youth on July 1, 2021, and counties became fully responsible for housing, programming, and treatment of youth who can no longer be committed to DJJ. Consequently, SB 823 also:

   > [E]stablishes a Juvenile Justice Realignment Block Grant based on a formula that includes a county's share of the state's total youth population, total youth adjudicated for more serious offenses and prior DJJ usage to allocate funding to

---

[2] For example, a BSCC investigator discovered that a youth had been held in isolation for 11 days without receiving exercise or recreation outside of their room. (See LA Times, March 16, 2022, *supra*.)

> counties. Funding is contingent on the submission of a plan by counties as outlined. Juvenile grants will be awarded in concurrence with the Board of State and Community Corrections and the OYCR. All juvenile justice grant administration functions in the Board of State and Community Corrections shall be moved to the OYCR no later than January 1, 2025. The bill provides $9.6 million to establish the Regional Youth Programs and Facilities Grant Program. (Assembly Floor Analysis for SB 823, Aug. 30, 2020, Bill Analysis - SB-823 Juvenile justice realignment: Office of Youth and Community Restoration. (ca.gov))

More recently, the FY 2022-23 state budget allocated $100 million to county probation departments to be disbursed no later than August 31, 2022, for the renovation, repair, and improvement of county juvenile facilities. (See AB 178 (Committee on Budget), Chapter 45, Statutes of 2022.)

This bill would appropriate an unspecified amount from the General Fund for purposes of providing grants to address the inadequate and dilapidated state of county juvenile detention facilities. The grant funding is limited to counties of the first class, those being ones with a population of more than 4,000,000 people. Los Angeles County is a county of the first class. Moreover, this bill says that a special statute is necessary "because of the unique need to address the significant problem of inadequate and dilapidated juvenile facilities in the County of Los Angeles." So, the intended recipient of the unspecified amount of funds is Los Angeles County.

Los Angeles County received $17 million of the $100 million allocated to improving juvenile facilities in last year's budget. It is unclear how those monies are being spent. However, as noted above, the Central Juvenile Hall facilities in Los Angeles County is in deplorable conditions. While Barry J. Nidorf is in better condition than Central, it too is far from an optimal environment for housing and rehabilitating youth. And neither are conducive to delivering the "LA Model" model of care – "a small-group treatment model that is youth-centered and embodies a culture of care rather than a culture of control." (https://probation.lacounty.gov/campus-kilpatrick/. [as of March 16, 2023].) Campus Kilpatrick, which embodies the LA Model, cost $48 million to construct. (*Ibid.*; see also Los Angeles Times editorial, *Is L.A.'s New Juvenile Jail Really Worth $48 Million? Yes. Here's Why*, June 29, 2017, https://www.latimes.com/opinion/editorials/la-ed-kilpatrick-20170629-story.html.)

5) **Argument in Support**: According to the *Los Angeles County Probation Officers Union, AFSCME Local 685*, the sponsor of this bill, "AB 695 addresses the need for modern, secure, and youth-centered facilities that enhance the rehabilitation function of the Los Angeles County Probation Department to meet the basic needs of detained youth and, more critically, to meet the expanded requirement of providing a "home-like" environment that enhances rehabilitation. The measure would establish a grant to fund these critical modifications, specifically to construct a new training facility for the L.A. County Probation Department and to renovate Central Juvenile Hall, Camp Joseph Paige or Dorothy Kirby Center, and Barry J. Nidorf Juvenile Hall.

"We strongly believe that DJJ youth should only have to be in these facilities until new ones are constructed. These facilities were constructed decades ago. They are dilapidated, prison-

like, and unsuitable for our collective vision to rehabilitate troubled youth and young adults. Nevertheless, we are doing our best with what we have, but our mission to provide second chances for youth and young adults in a trauma-informed, care-first setting is severely compromised with the current facilities. We cannot stay silent – we know what the problems are, and we believe that, as probation professionals, it is our responsible to identify the problems and work collaboratively to come up with the right solution so society is a better place for all of us to exist.

"Please consider these facts:

- Research shows that justice-involved youth will be motivated to change their lives for the better based on their physical environmental and specially designed programming to meet their mental, emotional, and psychological needs.

- Justice-involved youth and staff need to feel safe and secure to work in a stable, transformational rehabilitative environment.

- Unlike the Youth Transition Center in San Diego, L.A. County Probation facilities are aged, and do not provide adequate safe and secure spaces for programming, counselling, dental and eye care, and/or trauma-informed psychological assessment for challenged youth.

- The L.A. County Probation Training is not adequate to meet the modern-day juvenile reform training goals for Probation Officers, which have undergraduate and graduate degrees in social work and treatment and counselling with challenged youth.

- Unless the State supports and allocates funding for the L.A. County Probation Department to have a Secure Youth Treatment Facility (SYTF) and Probation Training Academy, the justice-involved youth that are housed in these aged juvenile living facilities will not feel safe and secure, nor will they be challenged to change their lives for the better."

6) **Related Legislation**:

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

b) AB 1582 (Dixon), would eliminate the requirement that the adjudication of specified serious offenses committed when the juvenile was 14 years of age or older be the most recent offense for which the ward has been adjudicated in order to be placed in a secured treatment facility. AB 1582 is pending hearing in this committee.

c) SB 448 (Becker), would prohibit the juvenile court from making a decision to detain a minor to be based on their county of residence. SB 448 is pending in the Senate Public Safety Committee.

7) **Prior Legislation**:

a) AB 178 (Committee on Budget), Chapter 45, Statutes of 2022, in pertinent part, allocated $100 million to county probation departments no later than August 31, 2022, for the renovation, repair, and improvement of county juvenile facilities.

b) SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, closed DJJ effective July 1, 2021, and as of that date, shifted the responsibility for all youth adjudged a ward of the court to county governments. Also provided annual funding for county governments to fulfill this responsibility.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Probation Managers Association Afscme Local 1967 (Co-Sponsor)
Los Angeles County Probation Officers Union, Afscme Local 685 (Co-Sponsor)
Seiu Local 1021 (Co-Sponsor)
Afcsme District Council 36
American Federation of State, County and Municipal Employees (AFSCME), Afl-cio
Coalition of County Unions
Los Angeles County Federation of Labor
Los Angeles/Orange Counties Building and Construction Trades Council
Los Angeles Professional Peace Officers Association
State Building and Construction Trades Council of CA

Opposition

None

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

Amended Mock-up for 2023-2024 AB-695 (Pacheco (A))

Mock-up based on Version Number 99 - Introduced 2/13/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

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

(a) Counties and their probation departments are charged with providing rehabilitation services for minors and youth adjudicated under provisions of the Welfare and Institutions Code. A county of the first class within this state is charged with supervision and housing responsibility for the largest concentration of adjudicated youth in the state.

(b) Despite housing the largest concentration of detained juveniles in the juvenile justice system, facilities in a county of the first class are in critical need of basic infrastructure improvement to meet the basic needs of detained youth and, more critically, to meet the expanded requirement of providing a "homelike" environment that enhances rehabilitation.

(c) The Legislature must act to positively impact facilities and infrastructure improvement for a county of the first class to address the critical need for secure and youth-centered facilities that enhance the rehabilitation function of these departments.

(d) A Juvenile Detention Facilities Improvement Grant Program is required to address the critical need for infrastructure improvements in a county of the first class.

(e) Failing to act now to address the significant problem of inadequate and dilapidated facilities will fail to provide critically needed rehabilitative services for a vulnerable population.

(f) A comprehensive, reasonable Juvenile Detention Facilities Improvement Grant Program will ensure that the needs of adjudicated youth are addressed and will distribute the economic impact of funding required for these improvements.

SEC. 2. Chapter 1.55 (commencing with Section 1979) is added to Division 2.5 of the Welfare and Institutions Code, to read:

CHAPTER 1.55. Juvenile Detention Facilities Improvement Grant Program

1979. There is hereby established the Juvenile Detention Facilities Improvement Grant Program within the ~~Board of State and Community Corrections~~ **Office of Youth and Community Restoration** to provide grants pursuant to this chapter to a county of the first class, as defined in Section 28022 of the Government Code, to address the critical infrastructure needs of the state's detained and supervised youth in the county.

1979.1. (a) It is the intent of the Legislature that a county of the first class meet the preliminary performance outcomes for infrastructure improvements of their juvenile detention facilities as developed by the ~~board~~ **office**.

(b) The ~~board~~ **office** shall award grants based on the priorities for infrastructure improvement. The ~~board~~ **office** shall establish minimum standards, funding schedules, and procedures for awarding grants that prioritize projects with the highest critical infrastructure need that shall further the purposes of this chapter.

1979.2. (a) To be eligible for grants from the program, a county of the first class shall prepare a juvenile detention facilities improvement plan for the expenditure of funds for capital improvements that are necessary to preserve and protect the county's juvenile detention facilities to enhance each facility's rehabilitation function.

(b) Funds shall only be used for **newly-constructed living space for youths, projects that would modernize housing units and sleeping rooms to comply with existing building standards, or provide rehabilitative or educational programming for youths.** ~~improvements that are necessary to preserve and protect the county's juvenile detention facilities to enhance each facility's rehabilitation function~~.

(c) Facility improvements made as part of this grant program cannot result in a net increase in county rated capacity.

1979.3. The ~~board~~ **office** shall submit a report to the **budget and public safety policy committees of the** Legislature, on or before January 1, 2025, detailing the grants awarded and the projects funded through the program. The report required by this section shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 3. The sum of ____ is hereby appropriated from the General Fund to the ~~Board of State and Community Corrections~~ **Office of Youth and Community Restoration** for the purpose of providing grants pursuant to the Juvenile Detention Facilities Improvement Grant Program under Chapter 1.55 (commencing with Section 1979) of Division 2.5 of the Welfare and Institutions Code.

SEC. 4. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California

Constitution because of the unique need to address the significant problem of inadequate and dilapidated juveniles facilities in the County of Los Angeles.

Date of Hearing: March 21, 2023
Counsel: Andrew Ironside

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

AB 697 (Davies) – As Amended March 15, 2023

SUMMARY: Establishes the Drug Court Success Incentives Pilot Program, which authorizes the Counties of Sacramento, San Diego, and Solano to offer up to $500 per month of supportive services to adult defendants who participate in the county's drug court to encourage participation in, and successful completion of, drug court. Specifically, **this bill**:

1) Provides that the superior courts in the Counties of Sacramento, San Diego, and Solano may offer a voluntary program under which adult defendants who participate in the county's drug court are offered supportive services to encourage participation and successful completion.

2) Requires the Judicial Council to administer the Drug Court Success Incentives Pilot Program.

3) Authorizes the Judicial Council to establish guidelines and reporting requirements for the drug courts participating in the program and to require one or more additional counties to provide specified data, as necessary.

4) Authorizes a judge presiding over a participating drug court to offer supportive services to a defendant who is eligible to be referred to, or who participates in, that drug court.

5) Grants a judge presiding over a participating drug court to have discretion to determine the appropriate amount of supportive services, with a value not to exceed $500 per calendar month, that are appropriate for a defendant to encourage participation in, and successful completion of, drug court.

6) Authorizes a judge presiding over a participating drug court to over supportive services, as appropriate, based on their determination of each of the following:

   a) The needs of the defendant;

   b) The amount that is necessary and appropriate to encourage participation and successful completion;

   c) The amount of funds available;

   d) Other public funds available to the defendant; and,

   e) The defendant's progress and achievements in the program.

7) States the supportive services program does not create an entitlement for a defendant to receive supportive services or for any particular level, type, or amount of supportive services.

8) Authorizes the judge to review the probation report, evidence submitted by the defendant, or any other relevant evidence to determine what supportive services are appropriate for the defendant to receive.

9) Defines "supportive services" as goods and service with a value not to exceed $500 per calendar month but shall not include cash payments.

10) Provides that supportive services include, but are not limited to, rental payments or other housing payment assistance, transit vouchers, reimbursement for vehicle repair, vehicle loan payment assistance, tuition payment assistance, child care expenses, reimbursement for expenses directly related to vocational or educational training, textbooks, program fees, gift cards, food, groceries, personal hygiene products, or other household expenses.

11) Excludes from "supportive services" payments or funds that may be used to pay for alcoholic beverages, tobacco products, or any other types of goods or services for which payment via an electronic benefits transfer cash payment would be prohibited and that are not enumerated as allowable supportive services, as specified.

12) Requires funding to be used to supplement, rather than supplant, funding for existing programs.

13) Requires the county probation department, or another court-designated county department, to be responsible for administering payments of, or reimbursement for, supportive services.

14) Authorizes the probation department to determine, as appropriate, whether direct payment to the defendant, a landlord, a vendor, or another person is appropriate.

15) Requires the probation department to determine, in consultation with the county department of social services, whether a defendant who participates in, or will participate in, the Drug Court Success Incentives Pilot Program is eligible for the Medi-Cal program or other benefits and services administered by the State Department of Social Services (CDSS), including, but not limited to, CalFresh, CalWORKS, and any other benefit program administered by CDSS.

16) Requires the drug court, if the defendant is eligible and appropriate for any benefits, to enroll the defendant in all eligible and appropriate services unless the defendant refuses to enroll, or is already enrolled, in one or more services.

17) Requires a participating drug court to collect, and to report to the Judicial Council pursuant to deadlines and according to criteria established by the Council, the following data:

    a) The number of defendants participating in the drug court in the 12 months prior to commencement of the pilot program;

    b) The number of defendants participating in drug court for each 12-month period after commencement of the pilot program;

c) The number of defendants who successfully completed the drug court program in the 12 months prior to commencement of the pilot program;

d) The number of defendants who successfully completed the drug court program for each 12-month period after commencement of the pilot program;

e) The number of defendants who were enrolled in but did not successfully complete the drug court program in the 12 months prior to commencement of the pilot program;

f) The number of defendants who were enrolled in but did not successfully complete the drug court program for each 12-month period after commencement of the pilot program, including a summary of the reasons for failure to successfully complete the program, the number of defendants who were removed from the program by the court, and the number of defendants whose term of probation expired and who did not agree to extend the probation period.

g) The amounts and description of the types of expenditures used for supportive services; and,

h) Any additional data that is relevant and appropriate to describe the activities conducted under the pilot program, a description of the challenges encountered in the implementation of the program, and any recommendations for changes.

18) Requires the Judicial Council, on or before January 1, 2028, to report to the Legislature and the Governor the data collected, as specified.

19) Require the report to compare the participating drug courts to similar data in one or more drug courts with a comparable total population and number of eligible defendants who may participate in drug court.

20) Authorizes the Judicial Council to issue interim reports, as appropriate, if data is available.

21) Grants the Judicial Council the authority to require a drug court to submit data as necessary to comply with the Drug Court Success Incentives Pilot Program requirements.

22) States that reporting of names, personal identifying information, or any other confidential information regarding defendants who participating in drug court or who receive supportive services under the program is not required.

23) Provides that the pilot program becomes operative only to the extent that funding is provided, by express reference, in the annual Budget Act or another statute.

24) Authorizes the Judicial Council to use up to 7.5 percent of the funds appropriated for the program each year for costs of administering the program, including, but not limited to, the employment of personnel, preparation of the report required, as specified, and evaluation of activities supported by the grant funding.

25) Provides a sunset date of January 1, 2029.

EXISTING LAW:

1) Authorizes the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, to agree in writing to establish and conduct a pre-guilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants. (Pen. Code, § 1000.5, subd. (a)(1).)

2) Requires the drug court program to include a regimen of graduated sanction and rewards, individual and group therapy, urinalysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or their designee, the district attorney and public defender. (Pen. Code, § 1000.5, subd. (a)(1).)

3) Requires the program, if there is no agreement in writing for a pre-guilty plea program by the presiding judge or their designee, the district attorney, and the public defender, to be operated as a pretrial diversion program, as specified. (Pen. Code, § 1000.5, subd. (a)(1).)

4) Requires the prosecuting attorney to review their file to determine with the defendant is eligible for drug court. (Pen. Code, § 1000, subd. (b).)

5) Requires the prosecuting attorney to file a declaration in writing with the court or state for the record the grounds upon which the determination of the defendant's fitness for drug court is based, and to make this information available to the defendant and their attorney. (Pen. Code, § 1000, subd. (b).)

6) Requires all referrals to drug court granted by the court, as specified, to be made only to programs that have been certified by the county drug program administrator or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. (Pen. Code, § 1000, subd. (c).)

7) Provides that any defendant who is participating in a drug court program may be required to undergo urinanalysis for testing for the presence of any drug as part of the program, but that urinalysis results shall not be admissible as a basis for any new criminal prosecution or proceeding. (Pen. Code, § 1000, subd. (c).)

8) Requires the prosecuting attorney, if they determine the defendant is eligible for drug court, to advise defendant and defense counsel in writing of that determination. (Pen. Code, § 1000.1, subd. (a).)

9) Requires the prosecuting attorney's notice to the defendant and their attorney to include:

   a) A full description of the procedures of drug court;

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

c) A clear statement that the court may grant admittance to drug court with respect to specified offenses provided that the defendant pleads not guilty to the charge or charges, waives the right to a speedy trial, to a speedy preliminary hearing, and to a trial by jury, if applicable, and that upon the defendant's successful completion of the program, the positive recommendation of the program authority and the motion of the defendant, prosecuting attorney, the court, or the probation department, but no sooner than 12 months and no later than 18 months from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant;

d) A clear statement that upon any failure of treatment or condition under the program, or under any of the specified circumstances, the prosecuting attorney or the probation department or the court on its own may make a motion to the court to terminate pretrial diversion and schedule further proceedings, as specified; and,

e) An explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about their arrest and pretrial diversion following successful completion of the program. (Pen. Code, § 1000.1, subd. (a)(1)-(5).)

10) Authorizes the court, if the defendant consents and waives the right to a speedy trial, a speedy preliminary hearing, and to a trial by jury, if applicable, to refer the case to the probation department, or the court may summarily grant admittance to drug court. (Pen. Code, § 1000.1, subd. (b).)

11) Requires the probation department, when directed by the court, to make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. (Pen. Code, § 1000.1, subd. (b).)

12) Requires the court to make the final determination regarding education, treatment, or rehabilitation for the defendant and, if the court determines that it is appropriate, to grant admittance to drug court if the defendant pleads not guilty to the charge or charges and waives the right to a speedy trial, to a speedy preliminary hearing, and to a trial by jury, if applicable. (Pen. Code, § 1000.1, subd. (b).)

13) Provides that a defendant's participation in drug court does not constitute a conviction or an admission of guilt for any purpose. (Pen. Code, § 1000.1, subd. (d).)

14) Requires the court to hold a hearing and, after consideration of any information relevant to its decision, to determine if the defendant consents to further proceedings and if the defendant should be granted admittance to drug court. (Pen. Code, § 1000.2, subd. (a).)

15) Provides that the period during which pretrial diversion is granted shall be for no less than 12 months nor longer than 18 months, unless the defendant requests, and the court grants, based on good cause, an extension of time to complete the program. (Pen. Code, § 1000.2, subd. (c).)

16) Provides that, if the defendant has completed drug court, at the end of that period, the criminal charge or charges shall be dismissed. (Pen. Code, § 1000.3(d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California is in the middle of one of the worst drug epidemics we have ever seen. No matter the age or drug, this battle with addiction is ravaging our communities. That is why AB 697 is a common-sense approach to try a different approach to curbing this epidemic. We need to start demonstrating and incentivizing to users that drug treatment is a very acceptable way to move on with their life and into a new positive direction. Incentives for housing or transportation can help ease the burden of high costs of living that puts stress onto users and ultimately drives them towards drugs."

2) **Drug Courts:** Drug Courts are specially designed court calendars that provide an alternative to traditional criminal justice prosecution for non-violent drug-related offenses. These courts combine close judicial oversight and monitoring with probation supervision and substance abuse treatment services. (https://www.courts.ca.gov/5979.htm) The primary objectives of drug courts are to reduce recidivism and substance abuse and to improve rehabilitation among drug court participants.

   Adult drug courts provide access to treatment for substance-abusing offenders in criminal, dependency, and family courts while minimizing the use of incarceration. They provide a structure for linking supervision and treatment with ongoing judicial oversight and team management. The majority of drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. (*Id.*)

   There is some disagreement about the effectiveness of drug courts. According to the National Institute of Justice, "Research amassed and analyzed through NIJ research grants and other sources suggests that drug courts are generally beneficial in terms of reducing recidivism and drug relapse." (Haskins, *Problem-Solving Courts: Fighting Crime by Treating the Offender*, National Institute of Justice (Sept. 26, 2019) <https://nij.ojp.gov/topics/articles/problem-solving-courts-fighting-crime-treating-offender> [last visited Mar. 15, 2023].) Others observe that "[e]valuations repeatedly demonstrate that drug court clients are less likely to be arrested again and more likely to be employed than if they had been through the regular criminal justice system. Supporters can thus rightly note that drug courts work" with minor offenders. (Pollack et al., *How to make drug courts work*, The Washington Post (Apr. 26, 2013) <https://www.washingtonpost.com/news/wonk/wp/2013/04/26/how-to-make-drug-courts-work/> [last visited Mar. 15, 2023].)

   Nevertheless, some believe the drug court model should be abandoned. Opponents claim that drug courts do not meaningfully reduce incarceration rates. "While drug courts reduce initial sentences, that reduction in incarceration is offset by the time participants spend behind bars for sanctions as well as lengthier sentences imposed on people who fail to graduate from drug courts." (Krinsky et al. *Why It's Time to Abandon Drug Courts*, The Crime Report (Mar. 5, 2021) <https://thecrimereport.org/2021/03/05/why-its-time-to-abandon-drug-courts/> [last visited Mar. 15, 2015.]; see also Pollack et al., *supra*.) They observe that the

number of people eligible for drug court is small and that people who fail drug court programs often receive more severe sentences than other defendants with the same charges. (Krinsky et al., *supra*; see also Pollack et al., *supra.*) Critics argue that resources spent on drug courts would be more effective if allocated to community-based harm reduction services and treatment. (Krinsky et al., *supra.*)

This bill seeks to improve drug court outcomes by offering participants up to $500 per month in supportive services to complete the programs.

3) **Proposition 47's Effect on California Drug Courts:** Proposition 47 made simple drug possession a misdemeanor, thereby removing the threat of incarceration in most cases. Since then, participation in the state's drug courts has dropped dramatically. According to a 2020 report by the Center for Court Innovation:

> According to our survey of 67 adult drug courts across the state, 67 percent of courts reported that their caseloads were down following the legislation's approval, and 51 percent reported considerable decreases. The average caseload declined significantly, from 51 to 39.
>
> A reduction in drug court referrals explains much of this decline. Sixty-five percent of courts reported a decrease in referrals, and even among defendants who were referred, more refused to enroll. The surveys suggest that the decreased legal leverage under Proposition 47 influenced that decision. In over half the California courts, eligible defendants were more likely to refuse participation following the passage of the new law. The most common reason cited was that the program was too long and intensive. Other reasons for refusal were that better legal outcomes were available outside of drug court or that they were not ready to commit to treatment. Courts that accepted only misdemeanor drug defendants reported more refusals.

(Arnold et al., *Drug Courts in the Age of Sentencing Reform*, Center for Court Innovation (2020) p. 2 <Microsoft Word - Report_SentencingReform_02262020.docx (innovatingjustice.org)> [last visited Mar. 15, 2023]; see also, Duara, *Carrots but no stick: Participation in California drug courts has plummeted*, CalMatters (July 5, 2022) <https://calmatters.org/justice/2022/07/california-drug-courts-prop-47/> [last visited Mar. 15, 2023].)

This bill seeks to promote participation in, and completion of, drug court by authorizing the court to offer supportive services to program participants. The supportive services may include rental payments or other housing payment assistance, transit vouchers, reimbursement for vehicle repair, vehicle loan payment assistance, tuition payment assistance, child care expenses, reimbursement for expenses directly related to vocational or educational training, textbooks, program fees, gift cards, food, groceries, personal hygiene produces, or other household expenses. Program participants are eligible to receive up to $500 per month in supportive services.

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

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

6) **Related Legislation**:

a) SB 63 (Ochoa Bogh), would create the Homeless and Mental Health Court Grant Program, funds from which may be used for, among other things, establishing or expanding a mental health court, homeless court, or hybrid collaborative court. SB 63 is pending in the Senate Public Safety Committee.

b) AB 890 (Joe Patterson), would requires a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program. AB 890 will be heard today in this committee.

7) **Prior Legislation**:

a) AB 1077 (Eggman), of the 2019-2020 Legislative Session, would have required courts, at the time a defendant enters a collaborative court program, to waive all penalties assessed over the base fine for current and prior violations, as specified. AB 1077 was held in the Assembly Appropriations Committee.

b) AB 542 (Waldron), of the 2017-2018 Legislative Session, would have authorized courts to collaborate with outside organizations to develop, implement, and administer a program to offer mental health and addiction treatment services to women who are charged in a complain that consists only of misdemeanor offenses or who are on probation for one or more misdemeanor offenses. The Governor vetoed AB 542.

c) SB 139 (Galgiani), Chapter 624, Statutes of 2016, would have provided that a person charged with a specified misdemeanor is eligible to participate in a preguilty plea drug court program, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

Date of Hearing: March 21, 2023
Counsel: Andrew Ironside

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

AB 701 (Villapudua) – As Introduced February 13, 2023

SUMMARY: Applies the existing weight enhancements that increase the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. Specifically, **this bill**:

1) Provides that a person convicted of specified crimes involving possession of a substance containing fentanyl for the purpose of sale/distribution, or for sale/distribution of a substance containing fentanyl, shall receive the following enhanced punishments:

   a) If the substance exceeds one kilogram by weight, the person shall receive an additional term of three years;

   b) If the substance exceeds four kilograms by weight, the person shall receive an additional term of five years;

   c) If the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years;

   d) If the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years;

   e) If the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years; or,

   f) If the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

2) Provides that the enhancement shall not be imposed unless the allegation that the weight of the substance containing fentanyl and its analogs exceeds the amounts provided is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

3) Specifies that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than one kilogram may, in addition, be fined by an amount not exceeding $1,000,000 for each offense.

4) Provides that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than four kilograms may, in addition, be fined by an amount not to exceed $4,000,000 for each offense.

5) States that a person receiving an additional prison term based on trafficking a substance containing fentanyl that is more than ten kilograms may, in addition, be fined by an amount not to exceed $8,000,000 for each offense.

6) Makes legislative findings and declarations.

EXISTING LAW:

1) Provides the following penalties for trafficking of cocaine, cocaine base, heroin and specified opiates, including fentanyl:

   a) Possession for sale is punishable by imprisonment for two, three, or four years in the county jail (Health & Saf. Code, § 11351);

   b) Sale is punishable as by imprisonment for three, four, or five years in county jail. Sale includes any transfer or distribution (Health & Saf. Code, § 11352.); and,

   c) Transportation of fentanyl, to a noncontiguous county, for purposes of sale is punishable by imprisonment for up to nine years in the county jail. (Health & Saf. Code, § 11352.)

2) 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.)

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

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

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

4) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

5) Provides the following additional sentencing enhancements based on the weight of a substance containing heroin, cocaine base, or cocaine possessed for sale or sold.

   a) 1 kilogram = 3 years

   b) 4 kilograms = 5 years

c) 10 kilograms = 10 years

d) 20 kilograms = 15 years

e) 40 kilograms = 20 years

f) 80 kilograms = 25 years (Health and Saf. Code, § 11370.4, subd. (a).)

6) States that in addition to the term of imprisonment provided by law for persons convicted of violating specified drug trafficking crimes, the trial court may impose a fine not exceeding $20,000 for each offense. (Health & Saf. Code, § 11372, subd. (a).)

7) Specifies that a person receiving an additional prison term based on a specified weight enhancement may, in addition, be fined by an amount not exceeding $1,000,000 for each offense. (Health & Saf. Code, § 11372, subd. (b).)

8) Provides that a person receiving an additional prison term based on a specified weight enhancement may, in addition, be fined by an amount not to exceed $4,000,000 for each offense. (Health & Saf. Code, § 11372, subd. (c).)

9) States that a person receiving an additional prison term based on a specified weight enhancement may, in addition, be fined by an amount not to exceed $8,000,000 for each offense. (Health & Saf. Code, § 11372, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "According to the Center for Disease Control, fentanyl has a heroin-like effect on the body yet is up to 50 times more potent than heroin while also being more addictive and more dangerous. Its availability in the illicit drug market has flourished in recent years, and it can kill even in small doses. In fact, synthetic opioids such as fentanyl are responsible for more than 150 deaths each day, not to mention the number of overdoses which do not result in death thanks to timely medical intervention.

   "Even young teens and children have been affected recently by this trend, as accidental ingestions and ingestions by those seeking the drug's effects have caused deaths and addictions spiraling into decreased quality of life not just for the individual, but for society as a whole.

   "Further, with illicit fentanyl costing the user up to $20.00 per pill, and chronic users potentially using multiple pills per day to avoid difficult withdrawal symptoms, fentanyl is a valuable commodity on the streets. A kilogram of fentanyl powder would provide enough fentanyl to manufacture approximately one million pills containing fentanyl, which would provide approximately 4 to 10 million dosages. A kilogram of pills containing fentanyl would equal approximately 9,080 pills, which would provide approximately 36,000 to 92,000 usages, as many fentanyl pill users crush and smoke the pills or take only a portion of a pill for one dosage, saving the rest for a later dosage. Therefore, possession of kilogram-or-

greater amounts of this powerful drug demonstrates large-scale trafficking or possession with intent to sell, rather than 'small-time' or 'low-level' drug-dealing, occasional furnishing, or possession for personal use. Possession of these types of significant amounts of this dangerous drug becomes even more profitable when such possession is not punishable to the same extent as is possession of the same exorbitant amount of heroin, its opiate cousin.

"Treating fentanyl possession in amounts exceeding a kilogram differently under the law from the possession of the same excessive amounts of heroin does not serve public safety, nor does it make sense given the potency and danger of fentanyl as compared with heroin in particular.

"AB 701 would add fentanyl by name to the list of drugs mentioned in subdivision (a) of Health and Safety Code section 11370.4, the same subdivision which mentions heroin, to clear up any ambiguity and state with certainty that possession of such large amounts of fentanyl is indeed punishable to the same extent as the same conduct involving heroin. It would close the "lucrativity gap" between possession of exorbitant amounts of heroin and exorbitant amounts of fentanyl, disincentivizing the possession of large amounts of the latter versus the former."

2) **Fentanyl 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].).

This bill attempts to reduce the number of people dying of overdoses involving fentanyl by deterring people who traffic fentanyl with a sentencing enhancement ranging from three to 25 years based on amount. However, in a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found "[n]o relationship between drug imprisonment rates and states' drug problems," finding that "high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths." (PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf > [last viewed Feb. 6, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

This may be because of the limited deterrent effect of harsher sentences generally. According tothe 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> [last visited Feb. 2, 2023]; see also http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf. Noting that "[r]esearch to date generally indicates that increases in the *certainty* of punishment, as opposed to the *severity* of punishment, are more likely to produce deterrent benefits"].)

Harsher sentences for drug trafficking offenses specifically may be particularly ineffective, in part because of the nature of illicit drug markets. As the National Research Council explains:

> For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high… Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits….
>
> Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] … overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and…avoid arrest… Arrests and imprisonments of easily replaceable offenders create illicit "opportunities" for others. (Cmte. On Causes and Consequence of High Rates of Incarceration, National Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences (2014) p. 146.)

According to PEW, "[A] large body of prior research…cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations." (PEW, *supra.*) PEW concludes:

> Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

Based on this research, one might reasonably question whether increasing the penalties for drug trafficking fentanyl would meaningfully impact the drug's availability or the number of deaths resulting from its illicit fentanyl use.

3) **Many Fentanyl Commerce Crimes are covered by the Current Drug Weight Enhancements**: The existing enhancement based on the weight of the drug involved in specified drug commerce crimes includes any substance containing cocaine, cocaine base, or heroin. Illicit drug manufacturers, distributors, and sellers often mix fentanyl or one its analogs with heroin, because it is much more potent than heroin and relatively easy and cheap to manufacture. Fentanyl is also mixed with cocaine. A defendant convicted of a drug offense involving a mixture of heroin and fentanyl or cocaine and fentanyl would be subject

to the weight enhancement under current law. This bill would only be necessary where the sole drug manufactured, distributed, or sold in the underlying crime was fentanyl.

4) **This Bill's Potential Impact on California's Jail Population**: Realignment began in October 2011. Since that time county jails have had oversight over most non-serious, non-violent, non-sexual felons and parolees who violate their parole. Before realignment, the maximum sentence in county jail was one year. Now that lower-level felons serve sentences in county jail, a portion of the jail population is serving sentences that are much longer than one year. Those factors related to realignment have served to increase population pressure on county jails.

   In February 2021, the Public Policy Institute of California (PPIC) published a report discussing population impacts on California jails related to Realignment, Proposition 47 (Prop 47), and the effects of the COVID-19 pandemic. After realignment, the jail population began to rise; as of October 2014, the month before the passage of Proposition 47, it stood at roughly 82,000 inmates, a gain of 14% from 2011. (Lofstrom & Martin, California's County Jails (Feb. 2021) <http://www.ppic.org/publication/californias-county-jails/>)[last viewed Mar. 21, 2022].)

   Voters approved Prop 47 in November 2014, reclassifying several property and drug crimes from felonies to misdemeanors. Prop 47 had an immediate and lasting impact on jail populations: the average daily population dropped by almost 10,000 between October 2014 and January 2015. The jail population remained relatively flat between January 2015 and the onset of the COVID-19 pandemic. By February 2020, the average daily jail population had dropped to about 69,000, although that population grew by roughly 7,200 persons May and September 2020. California currently has the capacity to house 79,000 persons in long-term county jail facilities. (Lofstrom & Martin, California's County Jails (Feb. 2021) <http://www.ppic.org/publication/californias-county-jails/>)[last viewed Mar. 21, 2022].)

   Moreover, even before realignment, many county jails were struggling with overcrowding. Indeed, "[p]rior to the passage of realignment, many counties were already operating under court-imposed population caps, and others had very little extra capacity in their jail systems." (Lofstrom et al., *Impact of Realignment on County Jail Populations*, Public Policy Institute of California (June 2013) p. 7 <https://www.ppic.org/wp-content/uploads/content/pubs/report/R_613MLR.pdf> [last visited Mar. 17, 2023].)

   This bill would dramatically increase sentences for individuals convicted of specified criminal offenses involving fentanyl. Many of the individuals sentenced pursuant to the provisions of this bill would serve their sentences in county jail, potentially straining already overcrowded facilities. Some will nonetheless serve prison sentences based on prior convictions.

5) **Argument in Support**: According to the *California Association of Highway Patrolmen (CAHP)*, "Existing law prohibits a person from possessing for sale or purchasing for purposes of sale specified controlled substances, including fentanyl, and provides for imprisonment in a county jail for 2, 3, or 4 years for a violation of this provision. AB 701 would impose that additional term upon, and authorize a fine against, a defendant who

violates those laws with respect to a substance containing fentanyl. By increasing the penalty for a crime, the bill would impose a state-mandated local program.

"The CAHP supports imposing an additional term upon a defendant who violates the law with respect to a substance containing fentanyl, as a way to combat the fentanyl crisis."

6) **Argument in Opposition**: According to *California Public Defenders Association*, "AB 701 relies on outdated War on Drugs mentality and would end up creating more harm than it would prevent. Relying on ever increasing penalties for drug offenses has been extensively researched, and we can therefore make some educated predictions about the outcome of bills like AB 701: it would not reduce the distribution of fentanyl nor would it prevent overdoses; it would reduce neither the supply of drugs or the demand for them i; and worse, it could actually discourage effective methods of dealing with the opioid crisis. One study found that states that increase their incarceration rates do not experience a decrease in drug use.ii When a drug seller is incarcerated, the supply of drugs is not reduced nor is the drug market impacted. Because the drug market is driven by demand rather than supply, research indicates that an incarcerated seller will simply be replaced by another individual to fill the market demand. iii

"Many of the people who will be incarcerated by this bill will be addicts themselves. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking in state prisons used drugs prior to the offense. iv These individuals often distribute drugs, not for profit, but as a way to support their own substance use disorder. Often, these "traffickers" are not high-level members of any organized drug distribution scheme, but are rather furnishing narcotics to friends and family members.

"The imposition of harsh penalties for distribution could undermine California's Good Samaritan law, which encourages people to contact emergency services in case of an overdose.v The threat of police involvement and harsh prison sentences may make an individual hesitant to call emergency services or run from the scene rather than help the victim.

"The primary risk of overdose for fentanyl results from its unknowing ingestion. The process of adding fentanyl to heroin is usually done early in the production process. According to the Drug Enforcement Administration, fentanyl is generally added to heroin before it enters the U.S.vi Therefore, low level sellers may not know they are distributing fentanyl. This bill would not reduce the inclusion of fentanyl in the drug supply, as it takes place high in the distribution chain.

"The War on Drugs has had a devastating impact on communities across California. The unintended consequences of using jails and prisons to deal with a public health issue will take decades to unravel. Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risk of fatal overdoses and diseases, increases stigma and marginalization, and drives people away from needed treatment, health, and harm reduction services.vii

"Moreover, California voters have signaled, again and again, their preference for using a health approach to drug offenses, and their desire to unwind the failed War on Drugs. Reversing course and increasing criminal penalties not only flies in the face of multiple

statewide elections, but it is also simply bad policy. Societal harms associated with drugs are not alleviated by ever longer prison sentences. Rather, these increased penalties impose their own harm, devastating vulnerable communities, particularly communities of color. For all of these reasons, AB 701 would take California in the wrong direction."

7) **Related Legislation**:

a) AB 367 (Maienschein), would apply the "great bodily injury" enhancement to any person who sells, furnishes, administers, or gives away a controlled substance when the person to whom the substance was sold, furnished, administered or given suffers a significant or substantial physical injury from using the substance. AB 367 is currently pending in this committee.

b) AB 1058 (Jim Patterson), would increase the penalty for possessing for sale or for trafficking more than 28.35 grams of fentanyl, an analog of fentanyl, or a substance containing fentanyl or an analog of fentanyl. AB 1058 is currently pending in this committee.

c) AB 18 (Joe Patterson), would require the court to advise a person convicted of specified drug offenses that they could be charged with voluntary manslaughter or murder in the future if they manufacture or distribute controlled substances and somebody dies as a result. AB 18 failed passage in this committee, but was granted reconsideration.

d) SB 62 (Nguyen), is identical to this bill. SB 62 is currently pending in the Senate Public Safety Committee.

e) SB 237 (Grove), would increase the punishment for drug trafficking fentanyl. SB 237 is currently pending the Senate Public Safety Committee.

f) SB 13 (Ochoa Bogh), is identical to AB 18 (Joe Patterson), referenced above. SB 13 is currently pending in the Senate Public Safety Committee.

g) SB 44 (Umberg), is identical to AB 18 (Joe Patterson), referenced above. SB 44 is currently pending in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 1955 (Nguyen), of the 2021-2022 Legislative Session, was identical to this bill. AB 1955 failed passage in this committee.

b) AB 1351 (Petrie-Norris), of the 2021-2022 Legislative Session, was identical to this bill. AB 1351 was not heard in this committee.

c) AB 2975 (Petrie-Norris), of the 2019-2020 Legislative Session, was identical to this bill. AB 2975 was not heard in this committee.

d) AB 2405 (Patterson), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II of the drug schedule and increase penalties for trafficking in

carfentanil. AB 2405 failed passage in this committee.

e) AB 2467 (Patterson), of the 2017-2018 Legislative Session would have increased the punishment for specified drug crimes involving fentanyl. SB 2467 failed passage in this committee.

f) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.

g) SB 176 (Bates), of the 2017-2018 Legislative Session, would have classified carfentanil in Schedule II and would have applied the weight enhancement to a substance containing carfentanil or fentanyl. SB 176 failed passage in the Senate Public Safety Committee.

h) SB 1103 (Bates), of the 2017-2018 Legislative Session, was substantially similar to this bill. SB 1103 failed passage in the Senate Public Safety Committee.

i) SB 1323 (Bates), of the 2015-2016 Legislative Session, would have applied the weight enhancement for possession for sale, or sale, of specified drugs, to fentanyl. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Association of Highway Patrolmen
California State Sheriffs' Association
Orange County Sheriff's Department

Opposition

California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
Friends Committee on Legislation of California

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

Date of Hearing: March 21, 2023
Consultant: Elizabeth Potter

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

AB 724 (Vince Fong) – As Introduced February 13, 2023

SUMMARY: Requires the Department of Justice (DOJ) to develop firearm safety certificate materials and tests in other specified languages besides English and Spanish. Specifically, **this bill**:

1) Requires DOJ to develop an instruction manual for a firearm safety certificate in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian.

2) Requires DOJ to develop audiovisual materials for certified firearm safety instructors in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian.

3) Expands the languages of the written and oral test for a firearm safety certificate to include traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian, to be administered by an instructor certified by DOJ.

4) Requires DOJ to offer an oral test for a firearm safety certificate, if the person is unable to read in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian to be administered orally by a translator.

EXISTING LAW:

1) Requires DOJ to develop a firearm safety certificate instruction manual in English and Spanish. (Pen. Code, § 31630, subd. (a).)

2) Requires DOJ to make the firearm safety certificate instruction manual available to licensed firearm dealers, who are required to make it available to the general public. (Pen. Code, § 31630, subd. (a).)

3) Requires DOJ to develop audiovisual materials for firearm safety in English and Spanish and issue them to instructors certified by DOJ. (Pen. Code, § 31630, subd. (b).)

4) Requires DOJ to solicit input from any reputable association or organization, including any law enforcement association that has as one of its objectives the promotion of firearm safety for the development of firearm safety certificate instructional materials. (Pen. Code, §31630, subd. (c).)

5) Requires the instruction manual to prominently include the following firearm warning: Firearms must be handled responsibly and securely stored to prevent access by children and other unauthorized users. California has strict laws pertaining to firearms, and you can be fined or imprisoned if you fail to comply with them. Visit the Web site of the California

Attorney General at https://oag.ca.gov/firearms for information on firearm laws applicable to you and how you can comply. (Pen. Code, § 31630, subd. (d).)

6) Requires DOJ to develop a written objective test, in English and Spanish, and prescribe its content, form, and manner, to be administered by an instructor certified by DOJ. (Pen. Code, § 31640, subd. (a).)

7) Requires a test to be administered orally by a translator, if the person taking the test is unable to read English or Spanish. (Pen. Code, §,31640, subd. (b).)

8) Requires the test to cover, but not be limited to, all of the following:

   a) Laws applicable to carrying and handling firearms, particularly handguns;

   b) The responsibilities of ownership of firearms, particularly handguns;

   c) Current law for the private sale and transfer of firearms;

   d) Current law for the permissible use of lethal force;

   e) Safe firearm storage;

   f) Issues associated with brining a firearm into the home, including suicide; and,

   g) Prevention strategies to address issues associated with brining firearms into the home. . (Pen. Code, § 31640, subds, (c)(1)-(7).)

9) States that, beginning on January 1, 2019, an applicant be provided with, and acknowledge receipt of, the following information:

   a) "Firearms must be handled responsibly and securely stored to prevent access by children and other unauthorized users. California has strict laws pertaining to firearms and you can be fined or imprisoned if you fail to comply with them. Visit the website of the California Attorney General at https://oag.ca.gov/firearms for information on firearm laws applicable to you and how you can comply";

   b) "If you decide to sell or give your firearm to someone, you must generally complete a 'Dealer Record of Sale (DROS)' form and conduct the transfer through a licensed firearms dealer. Remember, it is generally a crime to transfer a firearm without first filling out this form. If the police recover a firearm that was involved in a crime, the firearm's previous owner may be prosecuted if the previous owner did not fill out the DROS form. Please make sure you go to a licensed firearms dealer and fill out that form if you want to sell or give away your firearm."; and,

   c) "If you or someone you know is contemplating suicide, please call the national suicide prevention lifeline at 1-800-273-TALK (8255)." (Pen. Code, § 31640, subd. (d)(1)-(3).)

10) Requires DOJ to update test materials at least once every five years and to update its internet website to reflect current laws and regulations. (Pen. Code, § subd. 31640, subd. (e)(1) & (2).)

11) Requires a licensed dealer, as specified, an employee, or a managing officer or partner certified as an instructor to designate a separate room or partitioned area for a person to take the objective test, and maintain adequate supervision to ensure that no acts of collusion occur while the objective test is being administered. (Pen. Code, § 31640, subd. (f).)

12) Prohibits a dealer, except as specified, from delivering a handgun unless the person receiving the handgun presents to the dealer a valid handgun safety certificate. (Pen. Code, § 26840.)

13) Provides that DOJ shall develop handgun safety certificates, which expire 5 years after the date of issue, to be issued by DOJ-certified instructors to those persons who have complied with specified requirements. A handgun safety certificate shall include, but not be limited to, the following information:

    a) A unique handgun safety certificate identification number;

    b) The holder's full name;

    c) The holder's date of birth;

    d) The holder's driver's license or identification number;

    e) The holder's signature;

    f) The signature of the issuing instructor; and,

    g) The date of issuance. (Pen. Code, § 31655, subds. (a)-(c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's population is constantly growing to include people from different cultural backgrounds. Our firearm safety courses should reflect this diversity by expanding access to important safety training materials. AB 724 will make the Firearms Safety Certificate study guide and test available in traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian. By expanding linguistic access, this bill embraces the diversity of all Californians, encourages informed firearms ownership, and promotes public safety."

2) **Current Demographics in California:** Background information provided by the author's office states, "Over 43% of households in California speak a language other than English.[1]

---

[1] https://www.census.gov/quickfacts/CA.

'[T]he five languages other than English that are most widely spoken at home are Spanish, Chinese, Tagalog, Vietnamese, and Korean. They include approximately 3.5 million of the 3.8 million Californians with limited or no English proficiency.'[2] For written languages 'the top seven non-English languages used by limited English proficient adults in California according to the 2019 American Community Survey by the United States Census Bureau ... are Spanish, traditional Chinese, simplified Chinese, Vietnamese, Tagalog, Korean, and Armenian.'"[3]

This bill expands the languages in which instructional material pertaining to firearms safety and testing materials to obtain a firearm safety certificate are available to account for the most widely used languages statewide.

3) **Firearm Safety Certificates:** Beginning in 1993, possession of a handgun safety certificate was required to transfer firearms. The Department of Justice was required to create the requisite process to obtain a handgun safety certificate. Exemptions were provided for specified classes of persons who did not need to either successfully take the course or challenge the course with a specified exam.

SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme. SB 52 provided that, effective January 1, 2003, no person may purchase, transfer, receive, or sell a handgun without a Handgun Safety Certificate (HSC). SB 1080, Chapter 711, Statutes of 2010, required DOJ to prepare a pamphlet that summarizes California firearms laws as they pertain to a person other than law enforcement officers of members of the armed services. This pamphlet included, but was not limited to, the following: lawful possession, licensing procedures, transportation and use of firearms, the acquisition of hunting licenses, and other provisions as specified. (Pen. Code §, 34205 (a)(b).) SB 683 (Block) the DOJ was required to develop a firearm safety certificate instruction manual in both English and Spanish and available to licensed firearms dealers who must provide the manual to the general public. This language requirement extends to audio visual aids and tests –both oral and written– in to receive a firearm safety certificate.

This bill would require DOJ to develop all materials and testing requirements in the following languages, traditional Chinese, simplified Chinese, Tagalog, Vietnamese, Korean, and Armenian, in addition to English and Spanish.

4) **Argument in Support**: According to the *Conference of California Bar Associations*, the Sponsor of this bill, ""In California, a civilian who wishes to acquire or purchase a firearm must first obtain a Firearm Safety Certificate, which requires passing a written, objective test on their knowledge of firearms laws and regulations, firearms safety rules, and the risks involved with firearms ownership. According to Everytown for Gun Safety, 'It is critical that gun buyers and permit applicants are given safety information. Requiring gun dealers to inform purchasers of the risks associated with firearms allows buyers to make educated decisions about owning and storing guns and is a meaningful step towards preventing gun violence.' (https://www.everytown.org/solutions/educate-gun-owners.)

---

[2] Civil Code, § 1632(a)(3).
[3] Unemployment Insurance Code, § 316(a).

"Currently, Penal Code sections 31630 and 31640 require California's official study and testing materials for a Firearm Safety Certificate to be offered in English and Spanish only. But as the most recent Census data indicates, California can and should do more to improve access to its published materials in the native language of its residents, by including traditional Chinese, simplified Chinese, Korean, Vietnamese, and Armenian, consistent with the findings and enactment of AB 138 in the previous legislative session.

"Supporting the inclusion and education of all Californians, AB 724 encourages informed firearms ownership, reduces the risk of accidents and misuse, and promotes public safety."

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

6) **Related Legislation**: SB 241 (Min), would require a licensee and any employees that handle firearms to annually complete specified training. SB 241would also require the DOJ to develop and implement an online training course. SB 241 is pending in the Senate Committee on Public Safety.

7) **Prior Legislation**:

   a) AB 138 (Committee on Budget), Chapter 78, Statutes of 2021, which, among other things, required all standard information employee pamphlets concerning unemployment and disability insurance programs to be printed in English and the primary languages, defined as the top 7 non-English languages used by limited English proficient adults: Spanish, traditional Chinese, simplified Chinese, Vietnamese, Tagalog, Korean, and Armenian.

   b) SB 1289 (Committee on Judiciary), Chapter 92, Statutes of 2018, was the annual omnibus bill from the Senate Committee on Judiciary. SB 1289 included provisions that required DOJ to create a firearm safety certificate manual, audio visual aids, and tests – both oral and written – in English and Spanish, among other requirements.

   c) AB 1525 (Baker), Chapter 825, Statutes of 2017, updates warnings on packaging, instructional manuals, pamphlets, and signs posted at retailers relating to the risks of firearms to reflect recent updates in California law related to firearms.

   d) SB 683 (Block), Chapter 761, Statutes of 2013, extends the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun.

   e) SB 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
Asian Pacific American Gun Owners Association

Opposition

None Submitted

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

Date of Hearing: March 21, 2023
Counsel: Mureed Rasool

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

AB 725 (Lowenthal) – As Introduced February 13, 2023

SUMMARY: Requires that firearm frames, receivers, and precursor parts be defined as a "firearm" for purposes of reporting a lost or stolen firearm, and makes the failure to do so punishable as an infraction.

EXISTING LAW:

1) Defines a "firearm," in certain parts of the Penal Code for purposes such as firearm enhancements, as, "a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion." (Pen. Code, § 16520, subd. (a).)

2) Defines a "firearm" for purposes such as prohibitions on possessing in public, as including the frame or receiver, or a firearm precursor part; excludes the provision governing the reporting of lost or stolen firearms. (Pen. Code, §16520, subd. (b).)

3) Defines a "firearm precursor part" as "any forging, casting, printing, extrusion, machined body, or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted." (Pen. Code, § 16531, subd. (a).)

4) States that prior to manufacturing or assembling a firearm (not including precursor parts) that does not have a valid state or federal serial number, a person must:

   a) Apply to the Department of Justice (DOJ) for a serial number,

   b) Describe the firearm they intend to assemble, and;

   c) Provide their date of birth, address, and full name. (Pen. Code, § 29180, subd. (b)(1).)

5) Requires that within 10 days of manufacturing or assembling a firearm (not including precursor parts), they must engrave or permanently affix the serial number previously provided to them by the DOJ and notify the DOJ of such. (Pen. Code, § 29180, subd. (b)(2)-(3).)

6) Requires every person owning or possessing a firearm to report the loss or theft of the firearm, including the serial number of the firearm, to a local law enforcement agency within

five days of when they knew or reasonably should have known that the firearm had been stolen or lost. (Pen. Code, §§ 25250 & 25270.)

7) Exempts peace officers acting within the course and scope of their duties from reporting the theft or loss of a firearm if they reported it to their employing agency. Also exempts members of the U.S. Armed Forces, and other specified persons, if they lost the firearm while engage in their official duties. (Pen. Code, § 25255.)

8) Requires law enforcement officials to submit a description of the reported lost or stolen firearm into the DOJ Automated Firearms System. (Pen. Code, § 25260.)

9) Punishes the failure to report a lost or stolen firearm as an infraction with a fine up to $100 for a first offense, up to $1,000 for a second offense, and as a misdemeanor for any subsequent offenses. (Pen. Code, § 25265.)

10) States that a person who knowingly submits a false report to law enforcement that a firearm has been lost or stolen is guilty of an infraction with a fine up to $250 for a first offense, and a fine up to $1,000 for any subsequent offenses. States that this does not preclude prosecution under any other law. (Pen. Code, § 25275.)

11) Requires licensed firearms dealers to post a sign in a conspicuous place that informs persons of the requirement to report a lost or stolen firearm to law enforcement within five days of knowing or when they reasonably should have known. (Pen. Code, § 26835, subd. (a)(9).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While frames and receivers are considered firearms for purposes of registration and licensing under current law, they are not treated as such when it comes to requirements for reporting lost or stolen firearms. AB 725 closes this loophole by making failure to report a lost or stolen frame or receiver the same infraction as failure to report a firearm."

2) **Regulation of Precursor Parts in California**: In the United States, most firearms are produced by licensed manufacturers and sold through licensed gun dealers. Federal law requires all guns manufactured in the United States and imported from abroad to have serial numbers, typically displayed on the back of the frame. By contrast, "ghost guns" are manufactured in parts which can be acquired without a background check and can easily be assembled by the purchaser. Ghost guns are designed to avoid regulation by being sold in DIY kits containing their component parts, which, individually, are unregulated, but when assembled form a fully functional firearm. These DIY kits generally included an uncompleted frame or receiver of a gun, or a "precursor part." According to the New York Times:

> The criminal underground has long relied on stolen weapons with filed-off serial numbers, but ghost guns represent a digital-age upgrade, and they are especially prevalent in coastal blue states with strict firearm

> laws. Nowhere is that truer than in California, where their proliferation has reached epidemic proportions [...] Over the past 18 months, the officials said, ghost guns accounted for 25 to 50 percent of firearms recovered at crime scenes. The vast majority of suspects caught with them were legally prohibited from having guns.
>
> (New York Times. *'Ghost Guns': Firearm Kits Bought Online Fuel Epidemic of Violence.* (Nov. 2021) <https://www.nytimes.com/2021/11/14/us/ghost-guns-homemade-firearms.html> [as of Mar. 14, 2023].)

In 2022, California enacted AB 1621 (Gipson) Chapter 76, Statutes of 2021-2022, which required, in part, that firearm precursor parts be treated as firearms for various purposes such as prohibitions on carrying in public and manufacturing. According to the findings and declarations in the bill, the intent was to curb the proliferation of unserialized ghost guns built from precursor parts. However, it did not include precursor parts, or completed frames or receivers, in the California statute that requires anyone who owns or possesses a firearm to report when that firearm has been lost or stolen. (Pen. Code, § 25250.)

This bill would include precursor parts, as well as completed frames or receivers, to the currently existing requirements for reporting lost or stolen firearms, and accordingly would punish the failure to do so in the same manner as the failure to report a firearm under existing law. By doing so, this bill attempts to further curb the proliferation of ghost guns.

Arguably, prosecuting an individual for failure to report a lost or stolen precursor part will be challenging. Current law does not require precursor parts be serialized until they have been assembled. (Pen. Code, § 29180.) So, it would be difficult to trace a specific part back to a particular individual.

3) **Argument in Support:** None submitted.

4) **Argument in Opposition**: According to the *Gun Owners of California*, "This proposal is problematic, given that the Department of Justice has not fully determined the totality of what constitutes pre-cursor parts. Federal law is also vague on this matter as to what parts qualify. Something as benign as a pin or a spring – each of which can be purchased at any local hardware store – are oftentimes used in the assembly of many non-firearm-related products. It's an overreach that such items could conceivably fall under such a broad definitional umbrella. This will lead to significant and unnecessary confusion and could put well-meaning individuals unintentionally cross-wise with the law.

   "I believe it's time to get down to the business of reducing crime, rather than penalizing the lawful for the misdeeds of the unlawful – it will never have its anticipated resolution. For those who are interested in stemming the tide of criminal firearm use, we share a common desire, and GOC believes we can cooperatively move towards this goal. I would be more than happy to discuss this and other related issues at your convenience."

5) **Related Legislation**:

a) SB 2 (Portantino), would, among other provisions, disqualify an individual from the ability to obtain a concealed carry (CCW) permit if they failed to report the loss of their firearm as required by any local, state, or federal law. SB 2 is currently pending hearing in the Senate Public Safety Committee.

b) SB 8 (Blakespear), would hold any firearm owner civilly liable for incidences of property damage or bodily injury that results from use of their firearm unless they previously reported their firearm lost or stolen. SB 8 is currently pending referral in the Senate Rules Committee.

c) AB 574 (Jones-Sawyer), would a person purchasing a firearm to affirm that they have checked and confirmed possession of any firearms they own or possess. AB 574 is currently pending hearing in the Assembly Public Safety Committee.

6) **Prior Legislation**:

a) AB 1621 (Gipson) Chapter 76, Statutes of 2021-2022, required, in part, that firearm precursor parts be defined as firearms for various purposes.

b) SB 61 (Portantino), Chapter 737, Statutes of 2019-2020, exempts firearm owners who reported their firearm as lost or stolen from the 30-day waiting requirement to purchase more than one firearm.

c) Proposition 63 of the November 2016 general election, required, in part, that every person owning or possessing a firearm must report its theft or loss to law enforcement within five days of when they reasonably should have known it was lost or stolen.

d) SB 894 (Jackson) of the 2015-2016 Legislative Session, would have made it a crime to fail to report the theft or loss of a firearm to a local law enforcement agency within five days of the time the owner knew, or reasonably should have known, that the firearm was lost or stolen. SB 894 was vetoed.

e) SB 299 (Desaulnier) of the 2013-2014 Legislative Session, would have made it a crime to fail to report the theft or loss of a firearm to a local law enforcement agency within seven days of the time the owner knew, or reasonably should have known, that the firearm was lost or stolen. SB 299 was vetoed.

f) SB 1366 (DeSaulnier) of the 2011-2012 Legislative Session, would have made it a crime to fail to report the theft or loss of a firearm he/she owns or possesses to law enforcement agency within 48 hours of the time he/she knew or reasonably should have known that the firearm had been stolen or lost. SB 1366 was vetoed.

g) SB 59 (Lowenthal), of the 2005-2006 Legislative Session, would have required a gun owner to report a lost or stolen firearm within five working days. SB 59 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

None.

Opposition

Gun Owners of California, INC.

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

Date of Hearing: March 21, 2023
Counsel: Andrew Ironside

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

AB 742 (Jackson) – As Amended March 15, 2023

SUMMARY: Prohibits the use of canines by peace officers for arrest and apprehension, or in any circumstances to bite a person, but permits their use of canines for search and rescue, explosives detection, and narcotics detection. Specifically, **this bill**:

1) States it is the intent of the Legislature to prevent the use of police canines for the purpose of arrest, apprehension, or any form of crowd control.

2) Prohibits a peace officer from using an unleashed police canine to arrest or apprehend a person.

3) Prohibits a police canine from being used for crowd control at any assembly, protest, or demonstration.

4) Prohibits a police canine from being used in any circumstance to bite.

5) Prohibits a law enforcement agency from authorizing any use or training of a police canine that is inconsistent with any of the above.

6) Provides that police canines may be used by law enforcement for purposes of search and rescue, explosives detection, and narcotics detection that do not involve biting.

7) Includes legislative findings and declarations.

EXISTING LAW:

1) Authorizes a peace officer who has reasonable cause to believe that person to be arrested has committed a public offense to use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (Pen. Code, § 835a, subd. (b).)

2) Authorizes a peace officer to use deadly force when the officer believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

   a) To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or,

   b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a

peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code, § 835a, subd. (c)(1)(A) & (B).)

3) Prohibits a peace officer from using deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (c)(2).)

4) Defines "deadly force" as any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a, subd. (e)(1).)

5) Provides that an arrest is made by an actual restraint of the person, or by submission to the custody of an officer, and that the person arrested may be subjected to such restraint as is reasonable for their arrest and detention. (Pen. Code, § 835.)

6) Permits a peace officer who authorized to make an arrest and who has stated their intention to do so, to use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists. (Pen. Code, § 843.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Since their inception, police canines have been used to inflict brutal violence and lifelong trauma on Black Americans and communities of color. It's time to end this cruel and inhumane practice and, instead, work towards building trust between the police and the communities they serve."

2) **Police Canine Use and Deployment Policies:** Law enforcement agencies view the use of police canines as indispensable to protecting the public and law enforcement personnel. According the Los Angeles County Sheriff's Department,

> The prompt and proper utilization of a trained canine team has proven to be a valuable use of a unique resource in law enforcement. When properly used, a canine team greatly increases the degree of safety to citizens within a contained search area, enhances individual officer safety, significantly increases the likelihood of suspect apprehension, and dramatically reduces the amount of time necessary to conduct a search.

(Field Operations Direction (FOD): 86-037 Canine Deployment, Search and Force Policy, at p. 2; see also VanSickle et al., *When Police Violence Is a Dog Bite*, The Marshall Project (Oct. 2, 2020) <https://www.themarshallproject.org/2020/10/02/when-police-violence-is-a-dog-bite> [last viewed Mar. 16, 2023] [a joint investigation with USA Today, AL.com, and the Invisible Institute] and Kaste, *Videos Reveal A Close, Gory View of Police Dog Bites*, NPR (Nov. 20, 2017) <https://www.npr.org/2017/11/20/563973584/videos-reveal-a-close-gory-view-of-police-dog-bites> [last visited Mar. 16, 2023].) Despite their importance to law enforcement, the state has offered very little direction to local law enforcement on the use and deployment of police canines.

The Commission on Peace Officer Standards and Training (POST) has minimum training and performance standards for police canines. According to POST, "Patrol K-9 teams should meet minimum standards with regards to obedience, search, apprehension, and handler protection." (POST Law Enforcement K-9 Guidelines, p. xiii <https://post.ca.gov/Portals/0/post_docs/publications/K-9.pdf> [last viewed Mar. 16, 2023].) POST apprehension guidelines require, "[u]nder the direction of the handler and while off leash, the K-9 will pursue and apprehend a person acting as a 'suspect' (agitator/decoy)." It adds, "The K-9 team will demonstrate a pursuit and call off prior to apprehension. On command from the handler, the K-9 will pursue and apprehend the agitator/decoy. From a reasonable distance and on verbal command only, the K-9 will cease the apprehension." (*Id.* at p. 2.) POST detection guidelines advise "[t]he evaluator [to] be fully apprised of the pertinent agency policies and regulations prior to commencement of the exercise. The 'correct' response or reach of the handler, the dog, or the two acting together, may differ from agency to agency, based on prevailing agency policy." (*Id.* at 5.) The detection exercise duplicates the apprehension procedure, "except in [the detection] scenario the agitator/decoy will not stop and the handler will send the dog to pursue, contact, and apprehend the agitator decoy." (*Ibid.*) The exercise requires the police canine to "contact and control the agitator/decoy until called off by the handler." (*Ibid.*) "During the apprehension and on verbal command only from the handler, the dog will disengage the contact." (*Ibid.*)

These limited training and guidelines leave local law enforcement agencies to come up with their own use and deployment practices and procedures. Some agencies have limited the use of police canines. The Oakland Police Department, for example, provides that a police canine may be used "[t]o search for and assist in the apprehension of criminal suspects when there is reasonable suspicion to believe they committed a *forcible violent crime*, burglary, or a weapon-related offense"; or "[t]o pursue and apprehend criminal suspects who are attempting to actively evade arrest" for a forcible violent crime, burglary, or a weapon-related offense." (Office of Chief of Police, Oakland Police Department, Revised DGO K-9, Department Canine Program (Aug. 1, 2006) p. 1 <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak059998.pdf> [last visited Mar. 16, 2023] [emphasis in original].)

Similarly, the Los Angeles County Sheriff's Department provides for police canine deployment for "[s]earches for felony suspects, or armed misdemeanor suspects, who are wanted for SERIOUS crimes and the circumstances of the situation presents a clear danger to deputy personnel who would otherwise conduct a search without a canine." (FOD: 86-037, *supra*, at p. 2 [emphasis in original].) The department's guidelines further provide, "Searches for suspects wanted for Grand Theft Auto shall be limited to those who are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle." (*Ibid.*) Despite these limitations, the Special Counsel to the department recommended "winnowing the list of crimes for which canines should be used." (33rd Semiannual Report of Special Counsel, Los Angeles County Sheriff's Department (Sept. 2013) p. 14 <https://scvtv.com/pdf/lasd100713.pdf> [last visited Mar. 16, 2023].)

Would more robust statewide training and guidelines reduce the number and severity of injuries from police canine bites?

3) **Past Use of Police Dogs:** In July 2022, the California Task Force to Study and Develop Reparations Proposals for African Americans issued an interim report documenting the history of, among other things, the enslavement, racial terror, political disenfranchisement, and mistreatment of African Americans in the justice system. The report briefly discussed the role of police dogs in that history:

> Slave patrols also used dogs to attack enslaved people by biting them but also to instill fear, and used bloodhounds to track down enslaved people. Freedom seekers learned to run without shoes and put black pepper in their socks to make the slave patrols' bloodhounds sneeze and throw them off their scent.
>
> Much like slave patrols, police have continued to use dogs against African Americans in the 20th century through the present. Police used dogs against demonstrators during the civil rights movement. The United States Department of Justice noted in its 2015 report that the Ferguson Police Department "exclusively set their dogs against black individuals, often in cases where doing so was not justified by the danger presented." In Baton Rouge, Louisiana, police dogs bit at least 146 people from 2017 to 2019 and almost all of whom were Black…
>
> In the 1980s, the Los Angeles Police Department, which is the largest police department in California and one of the largest in the country, referred to Black suspects as "dog biscuits." Victims of police dogs sued and alleged that the department disproportionately used dogs in minority neighborhoods, which resulted in police dogs inflicting 90 percent of their reported bites on African Americans or Latinos. In 2013, the Special Counsel to the Los Angeles County Sheriff's Department, which is the largest sheriff's department in California and the country, found that African Americans and Latinos comprised 89 percent of the total individuals who were bitten by the department's dogs from 2004 to 2012. During the same time, the Special Counsel found that the number of African Americans that police dogs bit increased 33 percent.

(California Task Force to Study and Develop Reparations Proposals for African Americans, Interim Report (June 2022) p. 376, 380 < https://oag.ca.gov/system/files/media/ab3121-reparations-interim-report-2022.pdf> [last visited Mar. 16, 2023].)

There remain "stark racial disparities in police interactions and use of force, particularly for Black people." (Premkumar et al., *Police Use of Force and Misconduct in California*, PPIC (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [last visited Mar. 16, 2023].)

4) **Department of Justice Data on Use of Force Incidents Involving Police Canines:** According to data collected by the DOJ's Criminal Justice Statistics Center, law enforcement used a police canine in a use of force incident that resulted in serious bodily injury or death 76 times in 2020, accounting for 10.2% of the total such use of force incidents by law enforcement.[1] (DOJ, Use of Force Incident Reporting (2021) p. 30 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2020.pdf> [last visited

---

[1] The DOJ's Use of Force Incident Reporting contains only incidents where use of force resulted in serious bodily injury or death. DOJ, Use of Force Incident Reporting (2021) p. 1 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2020.pdf> [last visited Mar. 15, 2023].)

Mar. 15, 2023].) Of those 76 incidents, 49 were against persons of color—9 Black individuals, 33 Hispanic individuals, 3 Asian/Pacific Islander individuals, and 2 multi-race individuals. (*Id.* at 34 [2 individuals are identified as "other"].) In 29 of the 76 incidents, the officer did not perceive that the civilian was armed. (*Id.* at 37.) The civilian was later confirmed armed in 24 of the 76 of incidents. (*Id.* at 39.) In two incidents, the civilian did not resist. (*Id.* at 40.)

Moreover, according to the raw data on use of force incidents in 2020, 14 use of force incidents involving canine contact also involved the discharge of a firearm by the officer, six of which resulted in fatalities and three of which resulted in critical or serious injuries. Of those 14 incidents involving the use of both a canine and a firearm, eight were against people of color. (2020 URSUS Use of Force Data.)

In 2021, law enforcement used a canine in a use of force incident that resulted in serious bodily injury or death 77 times, or 11.7% of the total use of force incidents by law enforcement against a civilian. (DOJ, Use of Force Incident Reporting (2021) p. 31 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2021.pdf> [last visited Mar. 15, 2023].) Of those 77 incidents, 50 were against persons of color—13 Black individuals, 36 Hispanic individuals, and 1 American Indian individual. (*Id.* at 35.) In 37 of the 77 incidents, the officer did not perceive that the civilian was armed. (*Id.* at 38.) The civilian was later confirmed armed in 27 of the 77 incidents. (*Id.* at 39.) In five of those incidents the civilian did not resist. (*Id.* at 40.)

5) **Police Canine Bites:** Given the history and contemporary uses of police canines by law enforcement, the question is whether this particular law enforcement tool is unique.

Police canines are considered less than lethal. Law enforcement hopes that the presence of a canine will de-escalate a situation by intimidating the sought individual with the threat of a canine attack. The fear is supposed to make the person submit. If they do not surrender, and occasionally even when they do, law enforcement releases the canine who subdues the individual by biting them.

According to canine handlers, a police canine's bite should not cause serious injury. (VanSickle et al., *supra.*) However, as one report observed, "police videos shows some officers using biting dogs against people who show minimal threat to officers, and a degree of violence that would be unacceptable if inflicted directly by the officers." (Kaste, *supra.*).) A police canine's bite causes more damage than a domestic dog bite. According to one study, "Police dog bite victims were usually bitten multiple times…were bitten more often in the head, neck, chest, and flank. They were hospitalized more often, underwent more operations and had more invasive diagnostic tests." (https://www.sciencedirect.com/science/article/pii/S1572346106000596.)

Indeed, police canine bites are "strong enough to punch through sheet metal" and have been compared to shark attacks. (VanSickle et al., *supra.*) One article argued that "the police canine needs to be reconceptualized as the physical equivalent of a police baton with spikes three centimeters in length, the approximate length of German Shepherd teeth (i.e., a spiked impact weapon capable of sustained puncturing, compression-pressure, pulling and tearing)." (McCauley et al., *The Police Canine Bite: Force, Injury, and Liability*, The Center for Research in Criminology (Nov. 2008) <k9-crc-report-11-08-final-for-pds_1_.pdf (iup.edu)>

[last visited Mar. 16, 2023].) By comparison, for the purpose of DOJ use of force investigations, a deadly weapon includes a billy or blackjack. (Gov. Code, § 12525.3, subd. (a)(1).)

Moreover, individuals suspected of a crime are not the only ones injured by police canines. Occasionally, a police canine bites an individual who is not a suspect of a crime. (VanSickle et al., *supra*.) Sometimes, a law enforcement officer is the victim. According to NPR, "In 2016, California's workers compensation system recorded 190 law enforcement officers reporting on-the-job injuries involving police dogs." (Kaste, *supra*.)

6) **Lack of Comprehensive Data:** Efforts to examine the effect and scope of police canine use by law enforcement agencies are stymied by a familiar problem: insufficient data. There currently is no statewide data on the use of police canines. No entity is charged with collecting information that would help contextualize existing practices.

For example, supporters and opponents of the use of police canines by law enforcement dispute the effectiveness of call-off procedures. Police dog-handlers "point out that a dog can be called back after it's been unleashed — unlike the deployment of a Taser or the firing of a gun." (Kaste, *supra*.) Indeed, the Los Angeles County Sheriff's Department reasonably requires a handler to "call off the dog at the first moment the canine can be safely released." (FOD: 86-037, *supra*, at p. 2.)

But opponents point to instances where police canines do not obey call-off commands by their handlers. One report states, "Although training experts said dogs should release a person after a verbal command, we found dozens of cases where handlers had to yank dogs off, hit them on the head, choke them or use shock collars." (VanSickle et al., *supra*.) According to another, "Privately, handlers often talk about having trouble getting a dog to 'out,' or open its jaws. It's a concern that comes up on discussion boards, and in this K9 training video." (Kaste, *supra*.)

Law enforcement does not appear to collect data on the frequency with which police canines obey call-off commands. Some agencies require officers to document how long a bite lasted, but that does not appear to be a consistent practice throughout the state. (See FOD: 86-037, *supra*, at p. 2 [providing that "[w]ithout exception, a reference to the duration of the canine's contact with a suspect shall be included in the handler's supplemental report"].)

Would robust data collection and comparative analyses of different agencies' protocols assist in the development of policies and procedure that would limit the use of police canines to a handful of cases when their use is most justifiable?

7) **Bans on Use of Force by Law Enforcement:** The legislature has acted to limit the authority of law enforcement to use specific types of force. Following the death of George Floyd in Minneapolis, MN, California banned the use of carotid restraint control holds by law enforcement. (Gov. Code, § 7286.5; AB 96 (Gipson), Chapter 324, Statutes of 2020.) According to the DOJ's Use of Force Incident Reporting data, these holds resulted in serious bodily injury or death at similar rates as police canines, and the racial disparities among those who suffered the injuries mirrored those of police canines. For example, of the 60 carotid restraint hold incidents in the year before the ban, 37 were used on people of color (DOJ, Use of Force Incident Reporting (2019) p. 34 <https://data-

openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2019.pdf> [last visited Mar. 15, 2023].)

8) **Arguments in Support**:

a) According to the *American Civil Liberties Union (ACLU) California Action*, the bill's sponsor, "The use of police canines has been a mainstay in this country's violent oppression of Black Americans and people of color for centuries – from their origins with slave patrols, through brutal disruptions of nonviolent protests during the Civil Rights Movement, to their present-day use of savagely attacking and killing community members and terrifying people engaging in peaceful demonstrations. In the 1980s, Los Angeles Police Department officers referred to Black suspects as 'dog biscuits,' and as recently as 2015 the US Department of Justice noted that canine units at the Ferguson Police Department exclusively bit Black people, noting that they 'appear to use canines not to counter a physical threat but to inflict punishment.' A report by special counsel to the LA County Sheriff's Department found that over a six-month period, 100 percent of the people bitten by department's canines were Black or Latino.

"According to the California Department of Justice, between 2020 and 2021 police canine units severely injured or killed more than 180 people, two-thirds of whom were unarmed, and two-thirds of whom were people of color.

"Police canines are bred and trained to ensure that their bite is far more severe than a normal dog bite; their bites have been likened to being attacked by a shark or run over by a car. These attacks often lead to permanent physical disfigurement, with injuries to bones, blood vessels, nerves, breasts, testicles, faces, noses, and eyes, sometimes causing blindness. Moreover, police canines often attack people who are surrendering or otherwise do not pose a threat – including police officers, young children, the bodies of the deceased, and people asleep in their own homes.

"These attacks fail to serve a legitimate public safety interest. Many law enforcement agencies in California do not use police dogs for arrest, apprehension, or crowd control. Those agencies do not have higher rates of police shootings, nor do they have higher rates of police officer injuries or deaths in the line of duty. Officers in those agencies are able to carry out their duties without using these brutal and unnecessary weapons. On the contrary, there is an abundance of evidence demonstrating the danger that police dogs currently pose to the safety and wellbeing of members of the public.

"Attack dogs escalate situations, making situations that could be resolved through safer methods and de-escalation more dangerous. A person who is panicked, terrified, and in pain because a dog is mauling them will not be able to listen to or comply with an officer's commands; instead, they will instinctually take action to protect themselves by pushing the dog away or using defensive force. Police interpret these natural, instinctual actions – or even people writhing in pain – as threats and reason to use even deadlier force.

"The special counsel overseeing the LA Sheriff's Department concluded that less harmful alternatives to police dogs can be used to apprehend hiding suspects – including negotiation and tear gas. Senior Sheriff's Department officials agreed that generally a

suspect barricaded or hiding in a confined area like a shed or closet can be extracted without a dog bite. When police use canines to attack in these situations, they are choosing not to use tactics that could resolve a situation without injuries, and instead deploying a weapon that is guaranteed to result in serious injury or even death.

"Beyond the violence they directly inflict on their victims. police canines make people fear and distrust law enforcement, resulting in less safety and security for all, especially for communities of color. AB 742 would put an end to the serious public safety threat they pose."

b) According to the *California Public Defenders Association*: "Police canines have been used against Black Americans at rates far higher than any other population nationally and in California. A study of the use of police dogs by the Los Angeles Police Department showed that canines in the Los Angeles area were leveled solely against people of color for the first six months of 2013, and that the bite ratios against Blacks and Latinos remain disproportionately high. The Journal of Forensic and Legal Medicine last reported that Black people are disproportionately injured by police dogs in the U.S. According to the Marshall Project, police canines have mauled and even killed people who died from their injuries including an 89 year old Filipino man in his own backyard in Hayward, California.

"An article in the New Yorker magazine from March of 2015 offered one possible explanation of why this occurs. "(T)here is one social ill that all detection dogs, even the poorly trained ones, reveal with searing accuracy: the hidden racial prejudices of the police officers who deploy them." Whatever the reason or explanation, it is simply unacceptable we permit law enforcement to use canines to attack citizens of this state.

"AB 742 is a beginning. While it will not prohibit law enforcement from using canines in investigations, it requires that canines be on leashes and not be used to control crowds."

9) **Arguments in Opposition**:

a) According to the *Los Angeles County Sheriff's Department*, "I am in agreement with the section of the bill that seeks to prohibit the use of canines for crowd control at any assembly, protest, or demonstration. In fact, my current policy resembles this prohibition. However, I cannot support a bill that severely restricts an officer's ability to employ a proven, effective, and less lethal force option that can de-escalate other potentially life-threatening situations.

"In expressing the need for this bill, you refer to a *Bloomberg* news article that in turn refers to a Police Assessment Resource Center (PARC) report published 10 years ago that studied the use of canines in my department. At the time, PARC was a non-profit organization focused on the oversight of police activities.

"Although the PARC report suggested the need to re-evaluate our use of canines, the report in no way suggested a sweeping ban on the use of police canines. In fact, to the contrary, the report highlighted the benefits of the use of police canines. The report stated, *'Canines are a use of force tool that can play an important role in crisis situations, primarily where a dangerous suspect is hiding from deputies. Used properly,*

this tool can greatly enhance the efficiency of resolving the crisis, prevent deputy-involved shootings, and improve officer safety.'

"The PARC report went on to issue a caution and note, '*The ease of releasing a dog to go bite someone, however, is partly what led the overuse of canines in years past. The severity of a dog bite as a consequence, when compared to a youth joy riding in a car, or someone just running away from officers after committing a low-level crime, has never added up. For this reason, and as the direct result of our negotiations with the LASD, in 1994 the Department drafted its Field Operations Directive to limit the use of canines, and to bring clarity about when they can be used. According to the Directive, canines are only deployed in instances that include, "Searches for felony suspects, or armed misdemeanor suspects, who are wanted for SERIOUS crimes and the circumstances of the situation, present a clear danger to deputy personnel who would otherwise conduct a search without a canine."*'

"The preservation and reverence of human life is one of the core values of any officer. The use of a law enforcement canine and its handler in situations that warrant deployment offers one of the best chances to honor that value. Like any less lethal option, a law enforcement canine is unlikely to directly bring about the death of a suspect. Additionally, the use of a canine enhances officer safety, since any ambush planned by the suspect would not have a human law enforcement officer as its first target.

"My canine deployment policies reflect an understanding of the severe consequences the use of a law enforcement canine may cause. Our canine unit deployments are limited to searches for armed suspects, those who are wanted for serious or violent felonies, and/or where the circumstances of the situation would present a clear physical danger to the law enforcement personnel who would otherwise conduct a search without a canine.

"Our canine units are only deployed after extensive verbal warnings and announcements are given to the suspect, bystanders, and surrounding residents that a canine unit will be deployed. The Los Angeles County Sheriff's Department plays pre-recorded announcements in both English and Spanish by way of loudspeaker public address systems located in our patrol vehicles and helicopters. We supplement those announcements by requiring the canine handler to repeat the announcements and warnings at the entrance to each property or building prior to the search whenever it is practical to do so. All of that is done in the hopes that an incident can be resolved without incident.

"Often, the mere presence (both audible and visible) of the canine is enough to dissuade criminal acts or compel a suspect in hiding to surrender without incident. In those instances, the canine's intrinsic value as a de-escalation tool, and a means to obtain a peaceful resolution to a potentially life-threatening situation are most apparent.

"AB 742 would eliminate the use of a less lethal force option that has proven to save lives. It would lessen the chance that a dangerous offender might be taken in safely and would deny yet another measure of personal protection from the men and women who have sworn to uphold the laws of this state."

b) According to the *Redondo Beach Police Officers' Association*: "Canine training and use in California are fairly standardized across the State. The California Commission on Peace Officer Standards and Training (POST) has certification standards that all canines must pass once per year and a recommended training standard of 16 hours per month.

"This bill states in part, " ... ***be it in response to the Black Lives Matter protests over the murder of George Floyd, during the Los Angeles Race Riots and the Civil Rights Movement, or by slave catchers, police canines are a carryover from a dark past that*** *is* ***not often discussed."*** There is no argument that the use of dogs in the south during the civil rights movement was abhorrent. However, California in 2023 is not Selma, Alabama, in 1964. As a matter of training, police departments are not currently training police canine teams in tactics related to using police canines for crowd control purposes. There is no curriculum taught in basic police canine school, nor are there any classes or training associated with using police canines for crowd control purposes. There are many reasons for this.

"First and foremost, police canines are not an efficient or appropriate tool for riot control or crowd control purposes. Los Angeles Police Department policy prohibits canines from crowd control, and they were not used during the protests and riots described in the bill. Most Police Departments did not use canines until the 1980s, well after the civil rights marches.

"There is strong legislation today related to combatting bias in policing in California. Removing a de-escalation tool from officers' options, thus decreasing the options available to bring a potentially violent incident to a safe conclusion, does not remove alleged racially biased policing. Continued training combats bias in policing. Removing a tool like a police canine will only lead to more dangerous interactions between the police and violent offenders.

"Another section of the bill states ***"Per the California Department of Justice Use of Force data from 2021, injuries caused by police canines accounted for nearly 12 percent of cases that resulted in severe injury or death."*** Most injuries due to police canine bites do not conform to the definition of serious bodily injury. Many types of force used by police agencies across California can cause injuries. Each use of force should be considered individually and on its own merits. Police canine usage is no different. Injuries and hospitalizations caused by police canine bites vary by degree. However, these injuries and hospitalizations referenced by the bill are without context. Serious injuries due to canine bites are not typical, and when factored into the amount of police canine deployments is extremely low. In California, it is typical for a canine to locate criminal suspects, who are taken into custody 80 to 90 percent of the time without a bite.

"Death from police canine bites is almost non-existent. Compared to other uses of force (i.e., Taser, batons, firearms), death from a police canine bite has resulted only once in California. Comparatively, death from other forms of force employed by officers in California is much higher. However, the use of force during interactions between police and suspects in California is infrequent when compared to the number of police interactions overall.

"In 2006 the Los Angeles Sheriffs Department noticed an increase in officer involved

shootings following single deputy foot pursuits. Policy was changed and Deputies were required to stop chasing suspects on foot, contain the area and call for a canine to search. After this change, there was a substantial decrease in shootings. Lives were saved.

"In 1990 the Grand Jury in San Diego recommended increasing the number of Police canines to reduce Officer Involved shootings. The Police Department followed the recommendation and shootings decreased. In the 2000's The City of San Diego formed a committee of 71 community members and 66 members of the San Diego Police Department. The purpose of the committee was to address Use of Force and other policing issues. The committee unanimously agreed to expand the canine unit once again, so dogs would be available in every jurisdiction 24 hours a day. Another drop in shootings was seen.

"There has been an increase in California in training related to bias in policing, and Officers are required to complete mandated training. In many cases, police canines are utilized after a criminal incident has occurred, the suspects are believed to be armed, the crime committed was violent, the person is likely to be violent if encountered, and the offender is hiding from the police. Before using a police canine, the person is given a reasonable amount of time and every opportunity to peacefully surrender to the police. They are made aware through numerous announcements that the police are looking for them and that a police canine will be used if they choose not to surrender. The police canine being brought to a scene where a violent crime has been committed is, again, first and foremost, used as a tool for de-escalation. The suspect's race and gender are not factors in the decision to deploy or use a police canine. The factors used are the type of crime, the potential for violence, and whether the offender is armed, among other non-race related factors."

10) **Related Legislation**:

a) AB 79 (Weber), would prohibit a peace officer from using deadly force against or intending to injure, intimidate, or disorient a person by utilizing any unmanned, remotely piloted, powered ground of flying equipment except under specified circumstances. AB 79 is pending hearing in this committee.

b) AB 1034 (Wilson), would prohibit a law enforcement agency from installing, activing, or using any biometric surveillance system in connection with an officer camera or data collected by an officer camera. AB 104 is pending hearing in this committee.

11) **Prior Legislation**: AB 1196 (Gibson), Chapter 324, Statutes of 2020, prohibited a law enforcement agency for authorizing the use of a carotid restraint or a choke hold, as defined, and further prohibits techniques or transport methods that involve a substantial risk of positional asphyxia, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Sponsor)
Alliance San Diego

Asian Americans for Community Involvement
Asian Law Alliance
Cair California
California Alliance for Youth and Community Justice
California for Safety and Justice
California Public Defenders Association (CPDA)
California-hawaii State Conference of The NAACP
Californians United for A Responsible Budget
Care First California
Care First Kern
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance Project
Indivisible CA Statestrong
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Milpa (motivating Individual Leadership for Public Advancement)
NAACP Bakersfield Branch
National Police Accountability Project
Pacific Juvenile Defender Center
People's Budget Orange County
San Francisco Public Defender
San Jose Nikkei Resisters
San Jose Peace and Justice Center
Santa Cruz Barrios Unidos INC.
Silicon Valley De-bug
Smart Justice California
Social Compassion in Legislation
Techequity Collaborative
The Resistance Northridge-indivisible
Underground Grit
Vietnamese American Roundtable
Vietnamese Voluntary Foundation
Young Women's Freedom Center

4 Private Individuals

Opposition

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriffs
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California Fish and Game Warden Supervisors and Managers Association
California Force Instructors' Association

California Fraternal Order of Police
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
California Wildlife Officers Foundation
Claremont Police Officers Association
Corona Police Officers Association
County of San Joaquin
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Laguna Beach; City of
Long Beach Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Redondo Beach Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association
Santa Ana Police Officers Association
Shasta; County of
United States Police Canine Association
Upland Police Officers Association
Welsh Terrier Club of Southern California

13 Private Individuals

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

Date of Hearing: March 21, 2023
Counsel: Mureed Rasool

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

AB 751 (Schiavo) – As Amended March 16, 2023

SUMMARY: Clarifies that a law enforcement agency that adopts, revises, or, since April 13, 2021, has adopted or revised a policy regarding elder and dependent adult abuse, must also make revisions that include changes to similar policies, protocols, and trainings.

EXISTING LAW:

1) Requires police officers and deputy sheriffs to be trained, within 18 months of field duty assignment, in the legal rights and remedies available to victims of elder or dependent adult abuse, such as elder neglect and abuse laws, the role of adult protective services and public guardian offices, and protective orders. (Pen. Code § 13515, subd. (a).)

2) Requires that the Commission on Peace Officer Standards and Training (POST), when updating their elder abuse training materials, consult with the Division of Medi-Cal Fraud and Elder Abuse, local adult protective services offices, the Office of the State Long-Term Care Ombudsman, and other subject matter experts. (Pen. Code, § 13515, subd. (b).)

3) Defines "elder and dependent adult abuse" as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, and other specified circumstances. (Pen. Code, § 368.5, subd (c)(2).)

4) Provides that every law enforcement agency, when revising any portion of their policy manual that deals with elder and dependent adult abuse, must include the following information:

   a) A description of elder abuse and false imprisonment, as specified,

   b) The statutory rules regarding elder abuse investigatory jurisdiction, and;

   c) The definition of elder and dependent adult abuse, as specified. (Pen. Code, § 368.5, subd. (c).)

5) Defines "elder and dependent adult abuse" as any violation of a specific elder abuse law as well as physical abuse, neglect, financial abuse, abandonment, isolation, abduction, and other specified circumstances. (Pen. Code, § 368.6, subd. (b)(8).)

6) Defines "senior and disability victimization" among other things, as "elder and dependent abuse," unlawful interference with a mandated report, homicide of an elder or dependent adult or any person with a disability, child abuse of children with disabilities, domestic violence against an elder or dependent adult or child with disability. (Pen. Code, § 386.6,

subd. (b)(13).)

7) Authorizes law enforcement agencies to adopt policies regarding senior and disability victimization. (Pen. Code, § 368.6, subd. (c).)

8) States that if a law enforcement agency adopts or revises a policy regarding elder and dependent abuse, or senior and disability victimization, on or after April 13, 2021, it must include, among other things, the following:

   a) Information about the wide prevalence of elder and dependent adult abuse, sex crimes, hate crimes, domestic violence, and homicide against adult and children with disabilities, including disabilities caused by advanced age,

   b) A description of specified offenses against elders,

   c) Training protocols and schedules for training officers regarding elder, dependent adult, and child abuse,

   d) A requirement that an officer must seek an interpreter when interacting with a person who is hard of hearing or deaf,

   e) A statement that it is the agencies' policy to make or seek arrests in accordance with specified arrest statutes, and;

   f) The fact that victims and witnesses with disabilities can be credible witnesses when interviewed by properly trained officers. (Pen. Code, § 368.6, subd. (c)(1)-(28).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's 8.5 million older adults and 9 million people with disabilities, both adults and children, are uniquely vulnerable to the harms of abuse and other serious crimes, often unreported, uninvestigated and unpunished. Abuse can take numerous forms, from physical and psychological, to financial exploitation and caregiver neglect. AB 751 is the next, major step toward a culture change in law enforcement to provide much better protection for these at-risk populations by ensuring departments adopt improved training and response policies toward incidents of abuse."

2) **California Elder Abuse and Law Enforcement Policies**: In 2014-2015, the Santa Clara County Civil Grand Jury received a complaint regarding the alleged failure of law enforcement's use of California's elder abuse laws. The Grand Jury examined its jurisdiction's law enforcement agencies and explored a number of questions, including whether law enforcement manuals adequately discuss elder and dependent abuse laws, whether officers receive adequate training to address such abuse, and whether there was uniformity among law enforcement agencies. (Santa Clara County. *Civil Grand Jury Report: Protecting Our Most Vulnerable Residents*. (hereafter *Grand Jury Report*) (2014-15) <https://www.scscourt.org/court_divisions/civil/cgj/2015/Protecting%20Our%20Most%20Vulnerable%20Residents%20Final%20Report.pdf> [as of Mar. 13, 2023].)

Although it found that overall, law enforcement agencies were competent and committed to the protection of the elder and dependent adult population, there could be improvements. (*Id.* at 11.) Among the improvements was ensuring greater uniformity for elder abuse policy manuals throughout all agencies. (*Id.* at 2.) For example, the San Jose Police Department manual directed officers to investigate elder abuse incidents by using the county's Child Abuse Protocol. (*Id.* at 10.)

According to some researchers, this issue was not specific to Santa Clara. They stated that, "Most law enforcement policies in California lack appropriate guidance on response to elder abuse. Elder abuse policies appear to lag decades behind domestic violence and child abuse policies." (Kincaid et al. *Elder Abuse as an Emerging Public Health Concern: Identifying Deficiencies in Law Enforcement Policy*. (2015) <https://alz-journals.onlinelibrary.wiley.com/doi/epdf/10.1016/j.jalz.2015.06.1596> [as of Mar. 13, 2023].)

Since then two pieces of legislation went into effect that dealt with law enforcement elder abuse policies. SB 1191 (Hueso) Chapter 513, Statutes of 2018, which amended Penal Code Section 368.5, required local law enforcement, when revising their training policies in regards to the crimes of elder and dependent adult abuse, to include information such as a description of elder abuse and false imprisonment, as well as the statutory rules regarding elder abuse investigatory jurisdiction. Subsequently, SB 338 (Hueso) Chapter 641, Statutes of 2019, established the "Senior and Disability Justice Act" which created Penal Code Section 368.6, and required all local law enforcement agencies adopting or amending its senior and disability victimization policies after April 13, 2021, to include specified information, instruction, and protocols. Because of the way SB 1191 and SB 338 were written, a law enforcement agency revising its "elder and dependent adult abuse" policy would mean it would also have to revise its "senior disability and victimization and elder and dependent adult abuse" policy. (Pen. Code, §§ 368.5, subd. (c) & 368.6, subd. (c).)

This bill would clarify that a law enforcement agency revising its "elder and dependent adult abuse" policy would necessitate a revision of its "senior disability and victimization and elder and dependent adult abuse" policy.

3) **Argument in Support**: According to the *California Alliance for Retired Americans*, "Older adults are among those most at risk for crime victimization, including sexual assault, domestic violence, human trafficking, hate crimes motivated by bias against people with disabilities including disabilities caused by aging, and homicide. The obstacles to justice include a lack of reporting of these crimes to law enforcement agencies and the agencies' frequently inadequate response to the reports they do receive. 'Increase prevention of elder abuse – both physical and financial' was the highest-ranked goal that California voters selected for the Master Plan for Aging in a 2019 survey.

"Children and adults with disabilities are victimized by violent crime 3.5 times the rate of the general population. For those with cognitive disabilities (dementia, intellectual disabilities, and mental illness), the rate is more than 5.5 times higher. A 2012 survey of abuse victims with disabilities found that 52.8% of those who reported the abuse to police said that 'nothing happened.' Just 7.8% said a suspect was arrested.

"SB 338 (Hueso) of 2019 spelled out a comprehensive policy for local law enforcement

agencies training and guiding officers to handle these crimes. In 2022, California Legislative Counsel determined that later legislation made this policy mandatory on all agencies. AB 751 codifies that finding…"

4) **Related Legislation:**

   a) AB 1417 (Wood), would make changes to mandated reporting requirements for elder abuse. AB 1417 is pending hearing in the Assembly Aging and Long-Term Care Committee.

5) **Prior Legislation:**

   a) SB 1123 (Chang), Chapter 247, Statutes of 2020, defined terms such as physical abuse, neglect, isolation, by referencing portions

   b) SB 338 (Hueso), Chapter 641, Statutes of 2019, established the "Senior and Disability Justice Act" which required all local law enforcement agencies adopting or amending its elder and dependent adult abuse or senior and disability victimization policies to include specified information, instruction, and protocols.

   c) SB 920 (Beall), of the 2019-2020 Legislative Session, would have removed the term "dependent person" and replaced it with "adult with a disability," as well as amending the definition of "senior and disability victimization" as it related to law enforcement elder abuse policies. SB 920 was held in the Senate Health Committee.

   d) SB 1191 (Hueso), Chapter 513, Statutes of 2018, required local law enforcement to revise their training policies in regards to the crimes of elder and dependent adult abuse.

   e) AB 2623 (Pan), Chaptered 823, Statutes of 2014, expanded the elder and dependent adult abuse training curriculum requirements mandatory for specified peace officers and required the Commission on Peace Officer Standards and Training (POST) to consult with local protective services offices and the Office of the State Long-Term Care Ombudsman when creating new or updated training materials.

   f) AB 1819 (Shelley), Chapter 559, Statutes of 2000, required peace officer elder abuse training to include the subjects of physical and psychological abuse of elders and dependent adults.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance for Retired Americans (Sponsor)
Cal-tash
Educate. Advocate.
Pioneer Congregational United Church of Christ, Sacramento
Udw/afscme Local 3930

1 Private Individual

Opposition

None submitted.

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

Date of Hearing: March 21, 2023
Chief Counsel: Sandy Uribe

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

AB 758 (Dixon) – As Introduced February 13, 2023

SUMMARY: Creates sentencing enhancements for persons who in the commission, or attempted commission, of a felony are armed with a ghost gun and for specified persons who are prohibited from possessing firearms who possess ghost guns. Specifically, **this bill**:

1) Provides that any principal in a crime who is armed with a firearm that does not have a valid serial number or mark of identification during the commission, or attempted commission, of a felony shall be punished by an additional and consecutive two years in the county jail, unless arming is an element of the offense.

2) Provides that person who personally uses a firearm that does not have a valid serial number or mark of identification during the commission, or attempted commission, of a felony shall be punished by an additional and consecutive three years in the state prison.

3) States that this additional punishment shall be imposed notwithstanding the provision that a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety.

4) States that this additional punishment may be imposed notwithstanding the limitation on imposing more than one enhancement for being armed or using a firearm in the commission of a single offense.

5) Provides that any person who is prohibited from possessing a firearm by virtue of having a prior felony conviction or a mental disorder, as specified, shall be punished by an additional year in the county jail if the firearm in their possession does not have a valid serial number or mark of identification.

6) States that this additional punishment shall be imposed notwithstanding the provision that a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety.

7) States that this additional punishment may be imposed notwithstanding the limitation on imposing more than one enhancement for being armed or using a firearm in the commission of a single offense.

EXISTING LAW:

1) Imposes an additional term of imprisonment for carrying a loaded or unloaded firearm during the commission or attempted commission of a street gang crime. (Pen. Code, § 12021.5,

subds. (a) & (b).)

2) Imposes an additional term of imprisonment for committing or attempting to commit a felony while armed with a firearm. (Pen. Code, § 12022.)

3) Imposes an additional term of imprisonment for committing or attempting to commit specified sex offenses while armed with a firearm. (Pen. Code, § 12022.3.)

4) Imposes an additional term of imprisonment for furnishing or offering to furnish a firearm to another for purposes of aiding, abetting, or enabling the commission or attempted commission of a felony. (Pen. Code, § 12022.4.)

5) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. (Pen. Code, § 12022.5, subds. (a) & (b).)[1]

6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses[2] is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in great bodily injury (GBI) or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.[3] (Pen. Code, § 12022.53, subds. (b)-(d).)

7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)

---

[1] The firearm need not be operable or loaded. (*People v. Nelums* (1982) 31 Cal.3d 355, 360; see *People v. Steele* (1991) 235 Cal.App.3d 788, 791–795.) Someone personally uses a firearm if he or she intentionally displays the firearm in a menacing manner, hits someone with the firearm, or fires the firearm. (*People v. Bland* (1995) 10 Cal.4th 991, 997; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320; see also Pen. Code, § 1203.06, subd. (b)(2).)

[2] The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

[3] The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)

9) Imposes an additional term of imprisonment for discharging a firearm from a motor vehicle in the commission or attempted commission of a felony (Pen. Code, § 12022.55.)

10) Imposes an additional term of punishment for the improper transfer of a firearm which is subsequently used in the commission of a felony offense resulting in conviction. (Pen. Code, § 27590, subd. (d).)

11) States that notwithstanding any other law, a person who commits another crime with while violating the assault weapons ban, shall receive an additional and consecutive one-year enhancement. (Pen. Code, § 30615.)

12) States that when two or more enhancements may be imposed for being armed with or using a a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. (Pen. Code, § 1170.1, subd, (f).)

13) Provides that any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice (DOJ), on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal is guilty of a felony punishably by imprisonment in the county jail. (Pen. Code, § 23900.)

14) Provides that any person who buys, sells, receives, or possesses a firearm knowing that the serial number or other mark of identification has been changed, altered, or removed, is guilty of a misdemeanor. (Pen. Code, § 23920.)

15) Requires, beginning July 1, 2018, a person manufacturing or assembling a firearm to apply to the DOJ for a unique serial number or other mark of identification for that firearm. Punishes the failure to obtain a serial number from DOJ as a misdemeanor. (Pen. Code, § 29180.)

16) States that, notwithstanding any other law, the sentencing court "shall dismiss" an enhancement "if it is in the furtherance of justice to do so" except if dismissal of that enhancement is prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)

17) Instructs the court to consider specified factors in determining whether it is in the interests of justice to dismiss an enhancement, and requires the court to consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances are present. (Pen. Code, § 1385, subd. (c)(2)-(3).)

18) States that proof of the presence of one or more of those mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would "endanger public safety," meaning that there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to

others. (Pen. Code, § 1385, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 758 will create an additional enhancement for the possession of an unserialized or unregistered 'ghost' guns at the time a felony is committed. A felony committed by a person possessing a firearm that does not have a registered serial number as stated by Section 17312 will be subject to consecutive additional imprisonment: two years if the firearm is in possession during the felony and three years if the firearm is used in the commission of a felony or attempted felony. In addition, because of the lack of identification of ghost guns, it makes it nearly impossible to trace these guns back to an individual dealer or purchaser. Enhanced sentencing for individuals who use ghost guns in while committing unlawful acts will deter serious crime in our communities."

2) **Need for this Bill**: The stated need for the increased penalties proposed by this bill is the proliferation of ghost guns and their use in committing crimes.

   As the author of this bill recognizes, recovery of these firearms is usually in connection with the commission of another crime. Therefore, in the likely event that the person who possesses a ghost gun used it in the commission of another crime, that person will already face punishment for that other, more serious, crime as well as likely face punishment for a gun-use enhancement. Moreover, it should be noted that changing, altering, removing, or obliterating the identification markers on a firearm, whether assigned by the DOJ or placed there by the manufacturer, is a separate offense. (See Pen. Code, § 23900.)

   Increased criminal penalties for use of a ghost gun during the commission of a crime are unlikely to have the desired impact. 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 [as of March 5, 2023]) As such, increasing the penalty for ghost gun possession is unlikely to deter criminal conduct or reduce the prevalence of ghost guns in our communities.

   Similarly, in a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing: putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom. (*Sensible Sentencing for Safer California*, Little Hoover Commission, Feb. 2014, available at: http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf [as of March 5, 2023].)

3) **Limitations on Imposition of Enhancements**: Under existing law, when two or more enhancements for being armed with, or using, a firearm have been plead and proven with regards to the commission of a single offense, at sentencing the trial is limited to imposing

sentence on only one of the enhancements, and directed to impose sentence on the one with the longer sentence. (Pen. Code, § 1170.1, subd, (f).) Despite this longstanding rule of sentencing, this bill would allow the court to impose a sentence on the ghost gun enhancement as well as the other firearm-use enhancement.

In addition to permitting the stacking of firearm enhancements, this bill eliminates judicial authority under Penal Code section 1385, subdivision (c) to dismiss this new ghost gun enhancement. In general, "[s]ection 1385 has long been recognized as an essential tool to enable a trial court 'to properly individualize the treatment of the offender.'" (*People v. Tanner* (1979), 24 Cal.3d 514, 530.) "It was designed to alleviate 'mandatory, arbitrary or rigid sentencing procedures [which] invariably lead to unjust results.'" (*People v. Dorsey* (1972), 28 Cal.App.3d 15, 18.) "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470, 482, citation and internal quotation marks omitted.) One of the purposes of section 1385 is to ensure that sentences are proportional to a defendant's conduct. Effective January 1, 2022, SB 81 (Skinner) Chapter 721, Statutes of 2021, Penal Code section 1385, subdivision (c) provides that a court "shall dismiss" an enhancement if it is in the furtherance of justice to do so, unless any initiative statute prohibits such action, and unless dismissal endangers public safety. (See *People v. Mendoza* (2023) 88 Cal.App.5th 427 [section 1385, subdivision (c)(2)(C) does not mandate dismissal of an enhancement that could result in a sentence over 20 years where the trial court finds dismissal would endanger public safety].)

In exercising discretion under section 1385, subdivision (c), the court must give great weight to evidence offered by the defendant to prove any of mitigating circumstances, unless the court finds that dismissal would endanger public safety. Examples of mitigating circumstances include where: the enhancement would result in discriminatory racial impact; where multiple enhancements are alleged in a single case; where the enhancement could result in a sentence exceeding 20 years; and where the enhancement is based on a prior conviction that is over five years old. The statute allows a court to exercise this discretion before, during, or after trial or entry of plea as well as at sentencing. This bill would specify that the ghost gun enhancements must be imposed notwithstanding any discretion the trial court has to dismiss the enhancements under the provision of law.

4) **Enhancements and Proposition 57**: In November 2016, California voters overwhelmingly passed Proposition 57, the Public Safety and Rehabilitation Act of 2016 (Prop. 57). Prop. 57, created a process for parole consideration for eligible people convicted of nonviolent crimes. Those who demonstrate that their release would not pose an unreasonable risk of violence to the community may be eligible for release upon serving the full term of their primary offense when an alternative sentence has been imposed. Prop. 57 also gave the California Department of Corrections and Rehabilitation (CDCR) new authority to award certain credits that reduce the length of state prison sentences.

Propostion 57 adopted California Constitution, Article I, section 32, which states:

> (a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

> (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.
> ....
> (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

Nonviolent offender parole eligibility is based on an inmate's current convictions. (*In re Gadlin* (2020) 10 Cal.5th 915, 943.) CDCR regulations define a "violent felony" for purposes of early parole consideration as a crime or enhancement listed in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, § 3490, subd. (c)). The ballot materials provide support for this interpretation. (See I*n re Mohammad* (2022) 12 Cal.5th 518, 542.) In its classification of "violent felony," Penal Code 667.5 includes "any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of [Penal Code] Section 12022.3, or Section 12022.5 or 12022.55." (Pen. Code, § 667.5, subd. (c)(8).)

This bill creates two new enhancements which while related to use of a firearm, would not render an offense a violent felony under Penal Code section 667.5. So, as a practical matter, a person committing a non-violent felony would be eligible for Prop. 57 non-violent offender parole and would not necessarily serve the sentence for the enhancement despite their mandatory nature.

5) **Argument in Support**: According to the *California District Attorneys Association*, "As you well know, gun violence in California has increased in recent years, and much of the violence is perpetrated with the use of un-serialized firearms, many of which are ghost guns. Your bill will properly punish the use of these guns to commit crimes, which is why we support AB 758."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "While eliminating so called 'ghost guns' is a worthy endeavor, imprisoning more Californians is not the solution. We have already seen what mass incarceration has done to black and brown Californians and their families. Resources were diverted to imprison people, while California schools, health care and housing went wanting for adequate funding.

"Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of ghost guns in California.

"Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture ghost guns or ghost gun manufacturing equipment. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon.

"AB 758 is not needed. There are already sufficient penalties for any individual who

commits a crime while armed with any kind of firearm or using a firearm. These penalties range from an addition year in county jail or state prison to 25 years to life in state prison depending on the seriousness of the offense."

7) **Related Legislation**:

a) AB 27 (Ta), would have exempted specified firearm enhancements from the provision of law that states a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. AB 27 failed passage and in this committee.

b) AB 97 (Rodriguez), as introduced, would have increased the punishment from a misdemeanor to a felony for the crimes of buying, selling, or possessing a firearm with a removed or altered a serial number or possessing a firearm without a valid serial number, and for the crime of failing to obtain a serial number for an assembled firearm. AB was amended in this committee to a data collection bill on ghost guns. AB 97 is pending in the Assembly Appropriations Committee.

c) AB 328 (Essayli), would have prohibited the court from dismissing an enhancement for personal use of a firearm in the commission of certain violent crimes, except when the person did not personally use or discharge the firearm or when the firearm was unloaded. AB 328 failed passage in this committee and reconsideration was refused.

8) **Prior Legislation**:

a) AB 1509 (Lee), of the 2021-2022 Legislative Session, would have repealed several firearm enhancements, reduced the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two or three years, and authorized recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.

b) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County

Fullerton Police Officers' Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

California Public Defenders Association

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

Date of Hearing: March 21, 2023
Counsel: Cheryl Anderson

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

AB 763 (Davies) – As Introduced February 13, 2023

SUMMARY: Prohibits the placement of "Sexually Violent Predator" (SVP) released on conditional release within 1/4 mile of a home school.

EXISTING LAW:

1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served their prison commitment. This is known as the Sexually Violent Predator Act (SVPA). (Welf. & Inst. Code, § 6600, et seq.)

2) Defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

3) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)

4) Requires that a person found to have been an SVP and committed to the Department of State Hospitals (DSH) have a current examination on their mental condition made at least yearly. The report shall include consideration of whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and also what conditions can be imposed to adequately protect the community. (Welf. & Inst. Code, § 6604.9, subds. (a) & (b).)

5) Provides that when DSH determines that the person's condition has so changed that they are not likely to commit acts of predatory sexual violence while under community treatment and supervision, then the DSH Director shall forward a report and recommendation for conditional release to the court, the prosecuting agency, and the attorney of record for the committed person. (Welf. & Inst. Code, § 6607.)

6) Establishes a process whereby a person committed as an SVP can petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code, § 6608, subds. (a), (f) & (m).)

7) Provides that if the petition is made without the consent of the director of the treatment facility, no action may be taken on the petition without first obtaining the director's written

recommendation. (Welf. & Inst. Code, § 6608, subd. (e).)

8) Prohibits the court from holding a hearing on a petition for conditional release until the community program director designated by DHS submits a report to the court that makes a recommendation as to the appropriateness of placing the person in a state-operated forensic conditional release program. (Welf. & Inst. Code, § 6608, subd. (f); Pen. Code, § 1605, subd. (a).)

9) Requires the court to place the committed person in a forensic conditional release program operated by the state for one year if it finds that the person is not a danger to others due to their mental disorder diagnosis while under treatment and supervision in the community. Specifies that the program must include outpatient care. (Welf. & Inst. Code, § 6608, subd. (g).)

10) Provides that before actually placing a person on conditional release, the community program director designated by DSH must recommend the program most appropriate for supervising and treating the person. (Welf. & Inst. Code, § 6608, subd. (h).)

11) Provides that a conditionally released person shall be placed in their county of domicile prior to incarceration unless the court finds that extraordinary circumstances require placement outside the county of domicile. (Welf. &Inst. Code, §§ 6608.5, subd. (a), 6608.6.)

12) Prohibits a conditionally-released person from being placed within a quarter-mile of any kindergarten through twelfth grade school if the court finds that the person has "a history of improper sex conduct with children" or has previously been convicted of specified sex offenses. (Welf. & Inst. Code, § 6608.5, subd. (f).)

13) Provides that counsel for the committed individual, the sheriff or the chief of police of the locality for placement, and the county counsel and the district attorney of the county of domicile, or their designees, shall provide assistance and consultation in securing housing. (Welf. & Inst. Code, § 6608.5, subd. (d).)

14) Specifies that in recommending a specific placement for community outpatient treatment, DSH or its designee shall consider all of the following:

    a) The concerns and proximity of the victim or the victim's next of kin; and

    b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, subd. (e)(1)-(2).)

15) Specifies that when DSH makes a recommendation to the court for community outpatient treatment for any person committed as a SVP, or possibilities of community placement exist, DSH must notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

    a) The community in which the person may be released for community outpatient treatment;

b) The community in which the person maintained his or her last legal residence; and,

c) The county that filed for the person's civil commitment. (Welf. and Inst. Code, § 6609.1, subd. (a)(1)(A)-(C).)

16) Requires notice be given at least 30 days prior to DSH's submission of its recommendation to the court in those cases in which DSH recommended community outpatient treatment, or in which DSH is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than DSH, within 48 hours after becoming aware of the petition or placement proposal. (Welf. & Inst. Code, § 6609.1, subd. (a)(4).)

17) Specifies that agencies receiving the notice may provide written comment to the DSH and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. (Welf. &Inst. Code, § 6609.1, subd. (b).)

18) Requires that the agencies' comments and DSH's statements be considered by the court which shall, based on those comments and statements, approve, modify, or reject the DSH's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that DSH's recommendation or proposal is not appropriate. (Welf. &Inst. Code, § 6609.1, subd. (c).)

19) Requires an SVP on conditional release or outpatient status to be monitored by a global positioning system until the person is unconditionally discharged. (Welf. &Inst. Code, § 6608.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly bill 763 would allow home schools to be accounted for during the placement of sexually violent predators. I understand that the housing of these sexually violent predators is a large public safety concern, especially to parents hoping to provide education to their children in areas these individuals may be placed. As of now, the placement limitation for one quarter of a mile is only applicable to public and private schools.

   "Areas where any form of schooling, whether that be public, private, or an at-home setting certainly deserves to be treated at the same degree. This bill would extend the current housing limitations of sexually violent predators surrounding home schools."

2) **SVP Law Generally**: The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others. (Welf & Inst. Code, §§ 6600-6609.3.)

   DSH uses specified criteria to determine whether an individual qualifies for treatment as a

SVP. Under existing law, a person may be deemed a SVP if they have been convicted of a sexually violent offense against one or more victims, and has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that they will engage in sexually violent criminal behavior. (Welf. & Inst. Code, § 6600, subd. (a).)

If two licensed psychiatrists or psychologists concur in the diagnosis, the case is referred to the county district attorney who may file a petition for civil commitment. (Welf. & Inst. Code, § 6601, subds. (d), (h) & (f).)

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. (Welf. & Inst. Code, §§ 6602, 6604.) The state must prove (1) a person who has been convicted of a sexually violent offense against at least one victim and (2) who has a diagnosed mental disorder that (3) makes the person a danger to the health and safety of others in that it is likely that he or she will engage in [predatory] sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).) If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment. (Welf. & Inst. Code, § 6604.)

DSH must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. As part of the annual review, the person committed as an SVP has a right to examination by a retained or appointed qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.) A person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (Welf. & Inst. Code, § 6600, subd. (a).)

3) **Obtaining Release From Commitment**: A person committed as a SVP may petition the court for conditional release after one year of commitment. (Welf. & Inst. Code, § 6608, subds. (a) & (f).) The petition can be filed with, or without, the concurrence of DHS. The Director's concurrence or lack thereof makes a difference in the process used.

   Where a petition for conditional release is filed without DHS's concurrence or recommendation, and the person previously filed a petition without concurrence where the court determined it was frivolous or that the person's condition had not changed so that they no longer met the SVP criteria, the court must deny the current petition without a hearing unless it contains changed facts warranting a hearing. Upon receiving a first or subsequent petition without DSH concurrence, the court must "endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. (Welf. & Inst. Code, § 6608, subd. (a).)

   At a conditional release hearing in which the person does not have the concurrence of DSH, the burden is on the SVP to prove by a preponderance of the evidence that they would not be a danger to the health and safety of others. In particular, the person would have to prove that it is not likely they would engage in sexually violent criminal behavior due to their diagnosed mental disorder if supervised and treated in the community. (Welf. & Inst. Code, § 6604.9, subd. (k).) At a conditional release hearing in which the person has the concurrence of DSH, the burden is on the prosecution to prove by a preponderance of the evidence that conditional

release is not appropriate. (*Ibid.*)

4) **Placement near Schools:** Under current law, an SVP eligible for conditional release who has a history of sexual conduct with children "shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any grades 1 to 12, inclusive." (Welf. &Inst. Code, § 6608.5, subd. (f).) Earlier this year, in its majority opinion, the Sixth District Court of Appeal concluded this restriction applies to home schools because the only requirement in the statute is that the school provide instruction in kindergarten or grades one to 12. (*People v. Superior Court (Cheek)* (2023) 87 Cal.App.5th 373 380-382, review granted.)[1] The court acknowledged the argument raised that home schools should be treated differently because "the Legislature designed the school proximity restriction to protect large numbers of children assembled away from parent supervision. The smaller number of children typically present at a home school can be adequately protected . . . by treating the presence of a home school not as a per se prohibition, but as one factor in the overall consideration of whether placement in a certain area poses too great a risk to community safety." (*Id.* at p. 381.) However, the court stated that whether or not one agrees with this argument, the text of the statute did not support it. The court stated this is a question for the Legislature. (*Ibid.*)

   The court further concluded that under the current statute, the school need not even be in existence at the time notice is given to the community of a proposed SVP's placement. (*Cheeks, supra,* 87 Cal.App.5th at p. 380.) In the case before the court, Liberty Health, the agency that manages the conditional release program, had spent over a year to identify a site where it believed Cheeks could be placed without posing an unacceptable risk to the community. (*Id.* at p. 376.) The court understood the lower court's concern that interpreting the statute in this manner allowed any community member to create a home school to preclude an SVP's placement. But the court noted the current statute, by requiring instruction in kindergarten or grades 1 to 12, protects against "disingenuous obstruction of sex offender placement." (*Id.* at p. 380.) That being said, the court again stated it was "for the Legislature to remedy any perceived loophole, not the courts." (*Ibid.*)

   The dissent opinion disagreed with the majority's conclusion that the school proximity limitation applied to "any private home in which the residents elect to homeschool their children...." (*Cheeks, supra*, 87 Cal.App.5th at p. 383 (dis. opn. of Lie, J.).) The dissent found this inconsistent with the plain language of the statute (Welf. & Inst. Code, § 6608.5, subd. (f)), as well as with the Legislature's balancing of competing interests. (*Cheeks, supra,* at p. 383 (dis. opn. of Lie, J.).)

   > The legislative intent behind section 6608.5(f) was to create zones of exclusion around schools "'to prevent sex offenders from living near where our children learn and play.' [Citation.]" (*In re E.J.* (2010) 47 Cal.4th 1258, 1271....) The danger to be averted by section 6608.5(f) was not that of housing sex offenders in proximity to where children live: that remains a factor for discretionary consideration. It was driven by the "ambulatory practices of young children going to and coming from school" unsupervised. (*People v. Christman* (2014) 229 Cal.App.4th 810, 818 ....)

---

[1] A petition for review on behalf of DHS is currently pending before the California Supreme Court, S278628.

> As the Attorney General notes in opposition to the petition, "Had the Legislature sought to bar SVPs from placement near homes where children are present, it would have done so. From the standpoint of a quantum of risk, a home school where one or even a handful of children are instructed by their parents is analytically indistinguishable from an ordinary home where a few children reside. And yet, the Legislature drew the residency-restriction line at public and private schools." [fn. omitted.]

(*Cheeks, supra*, 87 Cal.App.5th at p. 386 (dis. opn. of Lie, J.).)

The dissent underscored that DSH, the state agency implementing the conditional release of SVPs since the inception of the statutory civil commitment scheme, had warned that further narrowing of placement options would make placement "effectively impossible." (*Id.* at p. 388.) "…[W]e disregard that warning at the public's peril, leaving the superior courts little alternative to releasing SVPs as transients without the level of supervision feasible at a fixed address." (*Ibid.*; see *People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774, 789.) Estimating the number of home schools in the state to be in the tens of thousands, DSH warned the difficulty in determining their locations would "'make conditional-release placement exceedingly difficult, if not impossible.'" (*Cheeks, supra*, at p. 388 (dis. opn. of Lie, J.).)

This bill would apply the school proximity restriction to home schools – i.e., codifying these concerns.

5) **Argument in Support**: According to *County of San Diego*, "The Sexually Violent Predator placement process and parameters are outlined in California Welfare and Institutions Code (WIC) Section 6608.5(f), which states, 'Notwithstanding any other law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any grades 1 to 12.

"Within this section of law, the definition of what a public or private school is has been the subject of debate, which has created confusion as to whether a home school site fits within the definition of a public or private school. AB 763 would clarify that for the purposes of this section, any school providing instruction to a child or children is considered a school, and this includes public schools, private schools, and private schools operated in a home environment as defined by the California Education Code. By clarifying that a home school site is school, AB 763 would prohibit the placement of a sexually violent predator from being placed within a ¼ mile of a home school.

"In San Diego County, there are several home school sites, study, and charter programs for children of all ages, where students are taught in a residential home environment, alternative to standard and mainstream education in school facilities. Many of these children have special needs or developmental disabilities. The ambiguous definition of schools, as outlined in California law, has created confusion as to whether sexually violent predators can be placed near a home school site, putting children and families at risk. Sexually violent predators who commit acts of sexual violence are a danger to the health and safety of our local communities and AB 763 would clarify the law to protect children and families by prohibiting a person released on conditional release from being placed within ¼ mile of a

home school site."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 763 is a rush to codify an interpretation of statutory language that is premature. Such a ban on housing near any home school is ill advised and creates policy incentives for individuals to prevaricate in an effort to keep individuals who have been to adjudicated to be no longer be dangerous from released from being placed in their communities on conditional release. Moreover, AB 763 risks making the entire Sexually Violent Predator Act (SVPA) unconstitutional.

"AB 763 is an attempt to codify the very recent Sixth District Court of Appeals holding in *People v. Superior Court of Santa Cruz County (Cheek)* (2023) 87 Cal. App.5th 373 filed on January 6, 2023, while a petition for review is pending in the California Supreme Court S278628 .

"While the petition for review is pending, the *Cheek* trial court is investigating whether a fraud was perpetrated on the court by the individuals claiming to be operating a 'home school'. Meanwhile in San Diego, a trial court bound by the Cheek precedent is in the midst of an ongoing hearing on whether multiple people committed perjury claiming a 'home school' in an effort to thwart placement of another SVP. These efforts are consuming enormous resources and scarce tax dollars on the part of the local public defender's office and the San Diego court.

"AB 763 would render the SVPA unconstitutional. The patients who are the subject of AB 763, ones eligible under existing law for conditional release, have been adjudicated to no longer pose a threat to public safety. A patient who no longer poses such a threat must be released from confinement. (See *Kansas v. Hendricks* (1997) 521 U.S. 346; *People v. Superior Court (George)* (2008) 164 Cal.App.4th 183, 193.) Release from confinement may be unconditional release or conditional. The SVPA provides for both, with conditional release a prerequisite to unconditional release. Under the SVPA, conditional release allows a supervised transition, continued treatment, and an opportunity to monitor to ensure that the patient continues to present no danger to the public while in the community -- before the patient may be considered for unconditional release.

"AB 763 would so limit conditional release as to render its availability illusory. AB 763 would add home schools to further circumscribe the locations eligible for placement. Under AB 763, certain conditionally released patients effectively would be excluded from every residence in every inhabited area, because anyone objecting to the placement could establish a home school interspersing them throughout residential communities. Because the SVPA does not provide for unconditional release without a period of conditional relief, the availability of unconditional release would become illusory. Without an effective provision for unconditional release, the SVPA will be invalidated under *Kansas v. Hendricks, supra*, 521 U.S. 346. Alternatively, to avoid invalidation of the SVPA, a court might release a patient as a transient, that is, without a fixed location if none can be found within the county of placement. (See *People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774.)

"Presenting yet another risk to the validity of the SVPA, the categorical placement restrictions that AB 736 would impose fail to connect a patient's particular condition or history to the exclusion. Such non-particularized, arbitrary residency exclusions would

subject the SVPA to the fate of Jessica's Law, whose residency restrictions were struck down as unconstitutional in *In Re Taylor* (2015) 60 Cal.4th 1019."

7) **Prior Legislation**:

a) AB 1641 (Maienschein), Chapter 104, Statutes of 2022, required an SVP on conditional release or outpatient status to be monitored by a global positioning system until the person is unconditionally discharged.

b) AB 1835 (Lackey), of the 2021-2022 Legislative Session, would have required a conditionally released SVP to be placed at a location within the person's city of domicile, if any, or in which the person has family, social, economic ties, and access to reentry services, unless it would pose a risk to the victim. Also would have required DHS to consider whether the placement has access to public transit, health and mental health providers, and, whether it would contribute to an overconcentration of SVPs on conditional release in the area. AB 1835 was not heard in this committee at the request of the author.

c) SB 841 (Jones), of the 2021-2022 Legislative Session, would have created the Sexually Violent Predator Accountability, Fairness, and Enforcement Act, which would have required DSH to take specified actions regarding the placement of SVPs in communities, including preparing an annual report on, among other things, the number and location of sexually violent predators under department supervision. SB 841 also would have required DSH, the Department of Corrections and Rehabilitation, and the Department of Forestry and Fire Protection to report to the Governor and the Legislature the status of suitable placements available for SVPs at their properties. SB 841 failed passage in the Senate Public Safety Committee.

d) SB 1034 (Atkins), Chapter 880, Statutes of 2022, established a process for finding housing for an SVP who has been found to no longer be a danger and sets forth what a court must do in order to determine extraordinary circumstances exist so that an SVP cannot be placed in their county of domicile.

e) SB 1333 (Bates), of the 2021-2022 Legislative Session, would have required, as a condition to placing a person in a county other than their county of domicile, the proposed designated county of placement be provided specified evidence prior to the court ordering the person to be placed in a county other than the county of domicile. Further, it would have required the department to provide additional information to a county of placement when a petition to revoke conditional release is filed. SB 1333 failed passage in the Senate Public Safety Committee.

f) AB 821 (Cooper), of the 2021-2022 Legislative Session, would have placed the burden of showing extraordinary circumstances on DSH by clear and convincing evidence when a court considers whether to place a person no longer found to be an SVP in a county other than their county of residence and would have limited how a lack of housing may be used to justify extraordinary circumstances for conditional release in a county other than county of residence. AB 821 was pulled by the author and not heard in this committee.

g) AB 255 (Gallagher), Chapter 39, Statutes of 2017, specified that courts must consider the connections to the community when designating the placement of an SVP in a county for conditional release.

h) AB 262 (Lackey), of the 2015-2016 Legislative Session, would have placed additional residency restrictions on SVP's conditionally released for community outpatient treatment by requiring that an SVP shall only reside in a dwelling or abode within 10 miles of a permanent physical police or sheriff station that has jurisdiction over the location and has 24 hour a day peace officer staffing on duty and available to respond to call for service. AB 262 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Diego

Opposition

California Public Defenders Association (CPDA)
Disability Rights California

2 Private Individuals

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