California State Assembly

PUBLIC SAFETY

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AGENDA

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

PART II- Analyses

AB 806 (Maienschein) – AB 1080 (Ta)

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

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

AB 806 (Maienschein) – As Introduced February 13, 2023

SUMMARY: Expands the definition of domestic violence 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. Specifically, this bill:

1) Expands the crimes permitting joinder of offenses occurring in different jurisdictions that can be consolidated in one trial where the victim and the defendant are the same to include "any crime of domestic violence."

2) Defines "any crime of domestic violence" as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship."

3) Specifies "abuse" means "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."

EXISTING LAW:

1) States that, 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. (Pen. Code, § 777.)

2) States that when a public offense is committed in part in one jurisdictional territory and in part in another, or the acts constituting or requisite to committing the offense occur in more than one territorial jurisdiction, the jurisdiction of the offense is in any competent court within either jurisdiction. (Pen. Code, § 781.)

3) Provides that if one or more violations of specified sex offenses occurs in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred, subject to the following conditions:

   a) Consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial court;

   b) The prosecution presents written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue; and,

c) Charged offenses from jurisdictions in which there is no written agreement from the district attorney must be returned to that county. (Pen. Code, § 784.7, subd. (a).)

4) Provides that if specified domestic violence offenses occur in more than one jurisdiction, and the defendant and the victim are the same for all the offenses, the jurisdiction of any of the offenses and for any offenses properly joinable with that offense is the jurisdiction where at least one of the offenses occurred. (Pen. Code, § 784.7, subd. (b).)

5) Provides that if one or more specified human trafficking, pimping, and pandering offenses occurs in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred, subject to the following conditions:

a) Consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial court;

b) The prosecution presents written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue;

c) Charged offenses from jurisdictions in which there is no written agreement from the district attorney must be returned to that county; and,

d) The court must consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses. (Pen. Code, § 784.7, subd. (c).)

6) Allows property crimes occurring in one jurisdictional territory if property is taken to another jurisdictional territory and an arrest is made there, to be prosecuted in either jurisdiction. (Pen. Code, § 786.)

7) Permits consolidation of different offenses which do not relate to same transaction or event where there is common element of substantial importance in their commission, such as the same class of crimes. (Pen. Code, § 954.)

8) Makes it a crime to willfully inflict corporal injury resulting in a traumatic condition upon a present or former spouse, present or former cohabitant, present or former fiancé/fiancée, present or former dating partner, or parent of child. (Pen. Code, § 273.5, subds. (a) & (b).)

9) Defines "traumatic condition" as "a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force." (Pen. Code, § 273.5, subds. (d).)

10) Defines "domestic violence" as "abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship." (Pen. Code, § 13700, subd. (b).)

11) Specifies that "cohabitant" means "two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to: sexual relations between the parties while sharing the same living quarters; sharing of income or expenses; joint use or ownership of property; whether the parties hold themselves out as spouses; the continuity of the relationship; and the length of the relationship. (Pen. Code, § 13700, subd. (b).)

12) Defines "abuse" as "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another." (Pen. Code, § 13700, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 806 seeks to expand the list of domestic violence related crimes that can be joined and tried in one jurisdiction when the defendant and victim are the same. Current law allows for certain domestic violence crimes to be joined and tried in one jurisdiction. However, as written, the statute overlooks several common domestic violence crimes, including strangulation without injury, criminal threats, witness dissuasion and protective order violations.

   "Without an amendment to the statute to allow for other crimes of domestic violence to be tried in one jurisdiction, victims may be subjected to many levels of exposure and involvement with prosecution and trial, the very issue the original statute was enacted to prevent. This proposal aims to protect repeat victims of domestic violence by including crimes not currently recognized by the statute."

2) **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.)

The Legislature has created several exceptions to the general rule that a case must be tried in the jurisdiction where the offense was committed if a defendant commits multiple offenses in different jurisdictions. As relevant here, Penal Code section 784.7, subdivision (b), permits more than one violation of specified domestic violence offenses that occur in more than one territorial jurisdiction to be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are all the same. Regarding this provision as set forth in former Penal Code section 784.7, the Supreme Court has stated:

> 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. Repeated abuse of the same child or spouse in more than one county creates that nexus. The venue authorized by Penal Code section 784.7 is not arbitrary. It is reasonable for the Legislature to conclude that this pattern of conduct is akin to a continuing offense and to conclude that the victim and other witnesses should not be burdened with having to testify in multiple trials in different counties.

(*People v. Price*, *supra*, 25 Cal.4th. at p. 1075.)

This bill would expand the definition of domestic violence offenses that may be consolidated in a single trial in any county pursuant to Penal Code section 784.7, subdivision (b). Specifically, it would include in the list of offenses that may be consolidated any domestic violence offense as defined in Penal Code section 13700, subdivision (b). This subdivision defines "domestic violence" as "abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship." Subdivision (a) of section 13700 defines "abuse" as "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."

Use of the broader definition of domestic violence offense appears to include the same class of domestic violence offenses currently excepted from the general rule under Penal Code section 784.7, subdivision (b) – e.g., Penal Code section 273.5 (infliction of injury on present or former spouse, present or former cohabitant, present or former fiancé/fiancée, present or former dating partner, or parent of child). It would also be consistent with the definition of domestic violence used by the Legislature in other statutes. (See e.g. Evid. Code, § 1109, subd. (d)(3) [evidence of prior acts of domestic violence]; Pen. Code, § 1001.95, § subd. (e)(2) [domestic violence offenses excluded from court-initiated misdemeanor probation].)

3) **Argument in Support**: According to the *San Diego County District Attorney*, a sponsor of this bill, "By expanding the law to include all crimes of domestic violence, victims will be spared from the trauma of testifying in front of their abuser, on different occasions, in multiple jurisdictions, regarding varying acts of domestic violence. Solving this problem was the foundation of the original legislative intent.

"A Senate floor analysis by the Senate Rules Committee regarding the original measure, which originated as Assembly Bill 2734, offered the author's statement of the purpose of the bill:

> "[Assembly Bill] 2734 seeks to provide for the ability to combine trials when the victim and the defendant are the same for all the offenses. In crimes of domestic violence and child abuse or molestation, there is a high degree of mobility. The first offense may happen in one county, and then the victim moves to another county. The defendant follows them and commits the same crime again. Because of the repeat offenses, the victim is faced with the possibility of multiple trials. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2734, as amended June 15, 1998.)

"Not only does Assembly Bill 806 act to unify the current statute with its original legislative intent, it also aligns with the legislative intent behind Evidence Code section 1109, which allows for evidence of uncharged domestic violence offenses to be cross-admissible in trial. Thus, much of what AB 806 seeks to change will already be part admissible in any one criminal case, making this bills solution a logical one that will save the time of jurors and maximize valuable court resources."

4) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "[T]his bill attempts to expand this jurisdiction significantly: to any crime of domestic violence as broadly defined by Penal Code section 13700. Penal Code section 13700's definition, unlike current law, has no requirement that any violence occur. See Penal Code section 13700 subd. (a) [defining "[a]buse" to include "placing another person in reasonable apprehension" of injury].) In addition, Courts have held that any crime that on its face is unrelated to domestic violence can qualify as crimes involving domestic violence under section 13700, depending on the facts of the case. (See e.g., People v. James (2010) 191 Cal.App.4th 478 ["Although the crime of burglary is not a crime of domestic violence on its face, the trial court properly found that under the facts of the case, the burglary was a qualifying offense" under the definition set forth in Penal Code 13700].)

   "Charges of domestic violence, however defined, are, of course, serious. Such accusations often arise between individuals who have decided to move far away from one another. Expanding this particularly jurisdictional loophole to include any crime under the sun that might be characterized as involving broadly defined domestic violence threatens to place significant additional burdens on victims, defendants, and other witnesses, who may be forced into court in a distant county for incidents that occurred in their county of residence."

5) **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 is being heard in this committee today.

6) **Prior Legislation**:

   a) 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.

b) 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.

c) 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.

d) 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.

e) AB 2734 (Pacheco), Chapter 302, Statutes of 1998, vested territorial jurisdiction for specified offenses, such as spousal abuse and stalking, that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred, if the defendant and the victim are the same for all the offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Hope International (Sponsor)
California Sexual Assault Forensic Examiner Association (Sponsor)
Center for Community Solutions (Sponsor)
Korean Prosecutors Association (Sponsor)
National Asian Pacific Islander Prosecutors Association (NAPIPA) (Sponsor)
San Diego County District Attorney's Office (Sponsor)
Women's Resource Center (WRC) of Oceanside (Sponsor)
California District Attorneys Association
Crime Victims United
Riverside County District Attorney

Opposition

California Attorneys for Criminal Justice

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 807 (McCarty) – As Introduced February 13, 2023

SUMMARY: Requires a state prosecutor to investigate incidents in which the use of force by a peace officer results in the death of a civilian. Specifically, **this bill**:

1) Requires a state prosecutor to investigate and gather facts relating to an incident in which the use of force by a peace officer results in the death of a civilian without regard to whether the civilian was unarmed.

2) Deletes existing provisions of law defining "deadly weapon" and "unarmed civilian" for the purposes of peace officer use of force investigations by the Department of Justice (DOJ).

3) Deletes existing provisions of law that require, commencing on July 1, 2023, the Attorney General (AG) to operate a Police Practices Division within the DOJ to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency and make specific and customized recommendations to any law enforcement agency that requests a review.

EXISTING LAW:

1) Specifies that subject to the powers and duties of the Governor, the AG shall be the chief law officer of the State. (Cal. Const., Art. 5, § 13.)

2) States that it shall be the duty of the AG to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., Art. 5, § 13.)

3) Provides that the AG shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their perspective jurisdictions as to the AG may seem advisable. (Cal. Const., Art. 5, § 13.)

4) Requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. (Gov. Code, § 12525.3, subd. (b)(1).)

5) Provides that the AG is the state prosecutor unless otherwise specified or named. (Gov. Code, § 12525.3, subd. (b)(1).)

6) Authorizes the state prosecutor to do all of the following:

a) Investigate and gather facts relating to an incident involving a peace officer that results in the death of a civilian if the civilian was unarmed or if there is a reasonable dispute as to whether the civilian was armed;

b) For all investigations conducted, prepare and submit a written report. The written report shall include, at a minimum, the following information:

i) A statement of the facts;

ii) A detailed analysis and conclusion for each investigatory issue; and,

iii) Recommendations to modify the policies and practices of the law enforcement agency.

c) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer. (Gov. Code, § 12525.3, subd. (a)(2).)

7) Requires the state prosecutor to post online each written report prepared by the state prosecutor, appropriately redacting any information in the report that is required by law to be kept confidential. (Gov. Code, § 12525.3, subd. (b)(3).)

8) Requires, commencing on July 1, 2023, the AG to operate a Police Practices Division within the DOJ to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency. The program shall make specific and customized recommendations to any law enforcement agency that requests a review. (Gov. Code, § 12525.3, subd. (c)(1)-(2).)

9) Defines "deadly weapon," for the purposes of peace officer use of force investigations by the DOJ, as any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles. (Gov. Code, § 12525.3, subd. (a)(1).)

10) Defines "unarmed civilian," for the purposes of peace officer use of force investigations by the DOJ, to include anyone who is not in possession of a deadly weapon. (Gov. Code, § 12525.3, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Ongoing acts of deadly force at the hands of law enforcement continue to bring calls for independent investigations by the Attorney General. My AB 1506 in 2020 made strides forward by requiring DOJ to investigate officer involved shootings of unarmed civilians, but more needs to be done. I have introduced this bill to close the independent investigation gap for police deadly force so that all deaths are investigated by California DOJ, increasing law enforcement accountability and transparency in our communities."

2) **Officer-Involved Shooting Investigations**: In 2020, the Legislature passed AB 1506 (McCarty) Chapter 326, Statutes of 2020, which requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. According to the DOJ:

> Pursuant to [AB 1506], the California Department of Justice is required to investigate all incidents of an officer-involved shooting resulting in the death of an unarmed civilian in the state. Historically, these critical incidents in California had been primarily handled by local law enforcement agencies and the state's 58 district attorneys.
>
> However, signed into law on September 30, 2020 and in effect on July 1, 2021, AB 1506 provides the California Department of Justice with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor, moving forward, to investigate and review officer-involved shootings of unarmed civilians across California. The California Department of Justice will investigate and review for potential criminal liability all such incidents covered under AB 1506, as enacted in California Government Code section 12525.3.
>
> When an officer-involved shooting occurs, transparent and open communication is critical to maintain public trust. As part of that and in alignment with AB 1506, the California Department of Justice will, as soon as feasible and appropriate, disseminate relevant information and materials about covered incidents and, ultimately, make public its determinations regarding the criminal prosecution of such incidents. Where criminal charges are not appropriate, the California Department of Justice will prepare and make public a written report communicating:
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> - A statement of facts, as revealed by the investigation;
> - An analysis of those facts in light of applicable law;
> - An explanation of why it was determined that criminal charges were not appropriate; and
> - Where applicable, recommendations to modify the policies and practices of the involved law enforcement agency.

(AG, *AB 1506: Officer-Involved Shooting Investigations and Reviews* <https://oag.ca.gov/ois-incidents> [as of March 10, 2023].) For the purposes of officer involved shooting investigations, the DOJ has employed the following definitions:

> "Officer-involved" - A shooting is "officer-involved" if the death to the unarmed civilian is caused by a California peace officer, within the meaning of Penal Code section 830, acting under color of authority. All shootings committed by officers while on duty are officer-involved shootings. Shootings committed by officers while off-duty are considered officer-involved shootings only if the officer is acting under color of authority. Shootings by correctional officers as defined, are excluded.

> "Shooting" - A "shooting" is the discharge of a metal projectile by a firearm. A "firearm" is 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.) A "shooting" does not include incidents involving the use of electronic control devices, stun guns, BB, pellet, air, gas-powered guns, or weapons that discharge rubber bullets or beanbags.
>
> "Unarmed civilian" - An "unarmed civilian" is "anyone who is not in possession of a deadly weapon."
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> "Deadly weapon" – A "deadly weapon' includes, but is not limited to, any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, pilum, ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles." All firearms, and BB/pellet guns, even if unloaded or inoperable, are deadly weapons. Objects that have a legitimate non-weapon purposes are considered deadly weapons only when, based on all the circumstances, they are actually being used in a manner likely to produce death or great bodily injury. The following are examples of objects that have been considered a deadly weapon when used in that manner: knives, box cutters, screwdrivers, bottles, chains, automobiles, rocks, razor blades, and iron bars. Replica firearms are not considered deadly weapons unless they are used in some particular manner likely to produce death or great bodily injury (e.g., as a bludgeon).
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> "Death" - Death occurs when "an individual has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem." DOJ may assume responsibility for cases where death appears to be imminent.

(AG, *Informational Bulletin 2021-DLE-03: Assembly Bill (AB) 1506 Definitions and Law Enforcement Agency's Notification Responsibility* (June 24, 2021) <https://oag.ca.gov/system/files/media/2021-dle-03.pdf> [as of March 10, 2023].)

Also, the AG has instructed:

> The Office of the Attorney General, led by the Division of Criminal Law, reviews and analyzes the reports and evidence to determine if criminal charges are warranted to be sought against the involved law enforcement officer(s). […] If the Attorney General determines that the investigation has yielded sufficient legally admissible evidence to sustain a conviction by an unbiased jury weighing all relevant evidence and plausible defenses to a standard of beyond a reasonable doubt, criminal charges will be authorized and announced at the time of filing. If the Attorney General determines that criminal charges are not warranted, a report stating the facts of the incident (i.e., witness statements, audio and video recordings, physical evidence, demonstrative diagrams, etc.) with a detailed analysis

> and conclusion for each investigatory issue is prepared and provided to the public. The Civil Rights Enforcements Section will be consulted for any recommendations to modify the policies and practices of the law enforcement agency, and such recommendations, if any, will be included in the report. When completed, the report will be posted and maintained on the Attorney General's public website, and may contain redactions to protect confidential information as required by law. (Gov. Code, § 12525.3(b).) Before charges are filed or a report is issued, DOJ will notify the involved agency head and family of decedent.

(DOJ, Special Prosecution Section Protocols (July 2021) <https://oag.ca.gov/system/files/media/AB%201506%20Special%20Prosecutions%20Section%20Protocols.pdf> [as of March 10, 2023].) A list of cases of officer-involved shooting investigations available on the DOJ's website at: https://oag.ca.gov/ois-incidents/current-cases.

3) **Need for this Bill**: Under existing law, the state prosecutor only investigates incidents of an officer-involved shooting resulting in the death of an unarmed civilian. (Gov. Code, § 12525.3.) Thus, the DOJ is not require to investigate any cases that result in an officer killing a person who is in possession of a deadly weapon. As noted above, the DOJ defines deadly weapon broadly.

   In February 2023, Huntington Park Police Department officers fatally shot Anthony Lowe, a double amputee described as "hobbling away from officers" and carrying a knife. (BBC, *Anthony Lowe: New Video Released in Police Killing of Double Amputee* (Feb 7, 2023) <https://www.bbc.com/news/world-us-canada-64547392> [as of March 10, 2023].) According to DOJ's website, there does not appear to be an investigation by a state prosecutor into Lowe's shooting. This is likely because Lowe was not unarmed, pursuant to DOJ's definition. Nearly 200 people die each year from interactions with California peace officers, with gunshots being the leading cause of death. (Public Policy Institute of California, *Police Use of Force and Misconduct in California* (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [as of March 10, 2023].) In 80% of civilian gunshot injuries or deaths, the civilian was armed with a weapon. (*Ibid.*)

   This bill would require a state prosecutor to investigate incidents in which the use of force by a peace officer results in the death of a civilian without regard to whether the civilian was unarmed.

4) **Argument in Support**: According to *Oakland Privacy*, "The California Legislature enacted a requirement for the California Department of Justice investigate all deaths of unarmed civilians at the hands of police in response to the well documented failures of police agencies to effectively investigate themselves. We see no need to re-litigate that original decision and will confine this letter to addressing why an expansion of that previous law makes sense.

   "A number of cases in California have recently demonstrated that a wholesale dismissal of fatalities of civilians at the hands of police if the civilian was armed with any kind of weapon does not serve the intent of the original bill nor the interests of justice. We highlight a few of those cases below:

"In March of 2018, a 31 year old homeless man Joshua Pawlick was killed in a hail of gunfire when 22 bullets were fired at him by the Oakland Police Department in a period of 2.23 seconds from behind an armored vehicle that had arrived at the scene two minutes prior. Pawlick was sleeping with a loaded gun by his side. He did not discharge the weapon. The law enforcement agency originally stated that Pawlick had pointed the weapon at the police, but video taken at the scene did not provide any evidence of Pawlick pointing the weapon at police. The local investigation has been troubled with officers fired and then restored to their jobs after a judge found errors in the City's investigation process. The City paid $1.4 million to settle a wrongful death civil suit.

"In February of 2019, 20 year old Willie McCoy was shot 55 times in 3.5 seconds by a squad of 6 Vallejo Police Departments who had arrived at a Taco Bell parking lot only minutes earlier. McCoy was slumped unresponsive over the driving wheel in his car. There was possibly a handgun in the vehicle. Police claimed McCoy reached for a gun, which caused the fusillade of bullets, but video from the scene showed McCoy only waking and moving his hand to scratch his ear before he was killed. An investigation by the City found the shooting was justified and the county DA refused to investigate. Some of the officers involved in the shooting have been associated with other cases of excessive force including a previous fatality (Ronnell Foster), a case of using a police dog to bite a teenager, and an excessive force case placing a boot on a restrained suspects head for over a minute. The civil lawsuit was settled for $5.7 million dollars.

"What these two cases, and others like them, have in common is that the only role of any weapon that was present was perceptual. The weapon was never fired or used, even though its presence or perceived presence was the ultimate cause cited for the fatality. These kinds of cases are especially difficult to adjudicate and the internal investigations are usually dissatisfying.

"According to the Public Policy Institute, in 80% of encounters resulting in death or a gunshot wound, the civilian was armed with a weapon, underscoring that the vast majority of civilian deaths at the hands of police are not covered by the current law.

"As a policy question, we think it is clear that the presence or perceived presence of a weapon does not always make a fatality an open and shut case, nor does it mean that the internal investigation won't be troubled. What Assembly Bill 807 is proposing is good public policy."

5) **Argument in Opposition**: According to *California Association of Highway Patrolmen* (CAHP), "AB 807 can lead to an increased workload for the Attorney General, which they are not prepared for. The current system is still new and needs more time to evaluate."

6) **Related Legislation**:

   a) AB 79 (Weber), would prohibit a peace officer from using deadly force against a person by utilizing an unmanned, remotely piloted, powered ground or flying equipment unless specified criteria are met. AB 79 is pending hearing in this Committee.

b) AB 742 (Jackson) would prohibit the use of an unleashed police canine by law enforcement, as specified. AB 742 is being heard in this Committee today.

7) **Prior Legislation**:

a) AB 1506 (McCarty), Chapter 326, Statutes of 2020, requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

b) AB 2917 (McCarty), of the 2019-2020 Legislative Session, would have required the AG, commencing on July 1, 2023, to create a program within DOJ to review the policies on the use of deadly force of a law enforcement agency that requests a review and to make recommendations. AB 2917 was never heard in this Committee.

c) AB 284 (McCarty), of the 2017-2018 Legislative Session, would have required DOJ, upon appropriation, to conduct a study of peace officer-involved shootings resulting in death or serious injury within a specified two-year period. AB 284 was held on the Suspense File of the Senate Appropriates Committee.

d) AB 86 (McCarty), of the 2015-2016 Legislative Session, would have required DOJ to commence an independent investigation if a peace officer uses deadly force in the performance of their duties that results in the death of an individual. AB 86 was held on the Suspense File of the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association (CPDA)
Oakland Privacy

Opposition

California Association of Highway Patrolmen
California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)

Analysis Prepared by: Liah Burnley / 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 808 (Mathis) – As Introduced February 13, 2023

SUMMARY: Provides that rape of a mentally disordered, developmentally disabled, or physically disabled minor shall be punished by the same prison sentences that apply to rape of a minor accomplished by force, duress, or threats. Specifically, **this bill**:

1) Makes the penalty for the crime of rape of a child who is under 14 years of age, who has a mental disorder or developmental or physical disability which is known, or reasonably should be known, to the perpetrator, imprisonment in the state prison for 9, 11, or 13 years.

2) Makes the penalty for the crime of rape of a child who is 14 years of age or older, who has a mental disorder or developmental or physical disability which is known, or reasonably should be known, to the perpetrator, imprisonment in the state prison for 7, 9, or 11 years.

EXISTING LAW:

1) Includes within the definition of rape an act of sexual intercourse with a person other than a spouse, who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. (Pen. Code, § 261, subd. (a)(1).)

2) Provides that a person who commits an act of rape against a victim who is incapable of giving legal consent due to a mental disorder or developmental or physical disability, shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 264.)

3) Provides that all rape is a serious felony subject to increased penalties, including under the Three Strikes Law. (Pen. Code, § 1192.7, subd. (c)(3).)

4) Provides that a person who commits rape upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another, shall be punished by imprisonment in the state prison for 9, 11, or 13 years. When the victim is 14 years of age or older, the punishment is imprisonment in the state prison for 7, 9, or 11 years. (Pen. Code, § 264, subd. (c)(1) & (c)(2).)

5) Defines unlawful sexual intercourse as an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person under 18 years of age. (Pen. Code, § 261.5, subd. (a).)

6) Provides that a person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor. (Pen. Code, § 261.5, subd. (b).)

7) Provides that a person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the county jail for 16 months, two or three years under realignment. (Pen. Code, § 261.5, subd. (c).)

8) Provides that a person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in a county jail for two, three, or four years under realignment. (Pen. Code, § 261.5, subd. (d).)

9) Provides that a person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger shall be punished by imprisonment in the state prison for a term of 25 years to life. (Pen. Code, § 288.7, subd. (a).)

10) Provides that a person 18 years of age or older who engages in oral copulation or sexual penetration with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 15 years to life. (Pen. Code, § 288.7, subd. (b).)

11) Provides that a person who commits an act of sexual penetration by foreign object or sodomy against a victim who is incapable of giving legal consent due to a mental disorder or developmental or physical disability shall be punished by imprisonment in the state prison for a period of three, six, or eight years. If both the defendant and victim are confined in the state hospital or a treatment facility of the mentally disordered, the offense is punishable by 16 months, two, or three years in state prison, or up to one year in the county jail. (Pen. Code, §§ 286, subds. (g) & (h), 289, subds. (b) & (c).)

12) Defines "sexual penetration" as "the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

13) Provides that a person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years. (Pen. Code, § 289, subd. (a)(1)(B).)

14) Provides that a person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10

years. (Pen. Code, § 289, subd. (a)(1)(C).)

15) Provides an additional punishment of one year when the defendant knows or reasonably should know that the victim of an enumerated offense, including rape or sexual penetration accomplished by force, duress or threats, is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, a quadriplegic, or under 14 years old. (Pen. Code, § 667.9, subd. (a).)

16) Provides an additional punishment of two years when the defendant knows or reasonably should know that the victim of an enumerated offense is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, a quadriplegic, or under 14 years old, and where the defendant also has a prior conviction for one of those crimes. (Pen. Code, § 667.9, subd. (b).)

17) Defines "developmentally disabled" for purposes of the vulnerable victim enhancement as "a severe, chronic disability of a person, which is all of the following:

    a) Attributable to a mental or physical impairment or a combination of mental and physical impairments;

    b) Likely to continue indefinitely; and,

    c) Results in substantial functional limitation in three or more of the following areas of life activity:

        i) Self-care;

        ii) Receptive and expressive language;

        iii) Learning;

        iv) Mobility;

        v) Self-direction;

        vi) Capacity for independent living; or,

        vii) Economic self-sufficiency." (Pen. Code, § 667.9, subd. (d).)

18) Provides that a person who commits an enumerated offense, including rape or sexual penetration accomplished by force, duress or threats, upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child. (Pen. Code, § 269, subd. (a).)

19) Makes aggravated sexual assault of a child punishable by imprisonment in the state prison for 15 years to life and requires the court to impose a consecutive sentence for each offense that results in a conviction under this provision if the crimes involve separate victims or involve the same victim on separate occasions. (Pen. Code, § 269, subds. (b) & (c).)

20) Provides that a person who commits any lewd or lascivious act upon or with the body of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)

21) Defines lewd and lascivious acts upon a child under the age of 14 years as a serious and violent felony subject to increased penalties, including under the Three Strikes Law. (Pen. Code, §§ 667.5, subd. (c)(6), 1192.7, subd. (c)(6).)

22) Provides that a person who commits a lewd or lascivious act, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code, § 288, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Ensuring the rights of our most vulnerable is a bipartisan issue. This bill isn't being pushed to promote one ideological agenda on crime or another. It's being introduced to solve a problem that is disproportionately affecting disabled children. AB 808 is compassionate. It is the type of law government was formed to pass. Those who sincerely care about equity and protecting the marginalized will recognize that[.]"

2) **Background**: According to a study in the Journal of Law and Human Behavior, "Children and adolescents with intellectual disabilities are especially likely to be sexually abused. Even so, their claims are not likely to be heard in court, possibly because people assume that jurors will not believe them." (https://link.springer.com/article/10.1023/A:1022551314668.)

   In 2010, Disability Rights California (DRC) "issued an advisory to every law enforcement agency in the state, reminding them about the increased risk of sexual assault for individuals with disabilities and challenging the bias that people with developmental disabilities and cognitive impairments are not reliable reporters of abuse. DRC called for law enforcement agencies to follow Commission on Peace Officer Standards and Training (POST) guidelines for sexual assault investigations. Children with disabilities, in particular, are three times more likely to be victims of sexual abuse than children without them." (https://www.disabilityrightsca.org/post/sexual-assault-awareness-month.) DRC has pushed for reforms ensuring that assaults are promptly reported and investigated. (*Ibid.*)

   According to the California Coalition against Sexual Assault (CALCASA), "Research has shown that programs that address the root causes of sexual violence, by modifying risk factors and/or enhancing protective factors, can prevent sexual violence perpetration (DeGue et al., 2014)."(https://www.calcasa.org/wp-content/uploads/2018/02/CALCASA_CCofSV_FINALSpreads_2018.pdf at p. 3.) "Prevention programs would lead to substantial cost savings: …every prevented rape or sexual assault of a child could save up to $227,700. Preventing future incidents of sexual violence, while maintaining and improving services, would reduce costs to victims, government and society." (*Ibid.*)

This bill is not directed at ensuring these assaults are promptly reported and investigated nor is it directed at prevention programs. Rather, it would increase the penalty for rape of a mentally disordered child, or one with developmental or physical disabilities.

3) **Current Penalties:** Under current law, it is always illegal to have sexual intercourse with a person under 18 years of age who is not your spouse. (Pen. Code, § 261.5, subd. (a).) The law deems minors incapable of giving legal consent to have sex. Depending on the circumstances, the act may be charged as a felony or a misdemeanor. Age difference is a significant factor regarding penalties. For example, if the defendant is 21 years of age or older, and the minor is under the age of 16, the penalty is a term of up to four years. (Pen. Code, § 261.5, subd. (d).) If the person 18 years of age or older and the minor is 10 years of age or younger, the punishment is 25-years-to-life in state prison. (Pen. Code, § 288.7, subd. (a).)

   Lewd or lascivious acts upon a child under 14 years of age is punishable by three, six, or eight years in prison. (Pen. Code, § 261.5, subd. (a).) If the child is 14 or 15 years of age, and the perpetrator is at least 10 years older, the act is punishable by a term up to three years. (Pen. Code, § 261.5, subd. (a).)

   An act of sexual intercourse committed with a mentally disordered, developmentally disabled, or physically disabled person who is unable to give legal consent is rape and punishable by up to eight years in prison. (Pen. Code, §§ 261, subd. (a)(1); 264, subd. (a).) The penalties are increased where any victim of rape is a minor and the act was accomplished by force, duress or threats. If the minor victim was under 14 years of age, the offense is punishable by 9, 11, or 13 years in state prison. If the minor victim was 14 years of age or older, the offense is punishable by 7, 9, or 11 years in state prison. (Pen. Code, § 264, subd. (c).)

   This bill would make the rape of a mentally disordered, developmentally disabled, or physically disabled minor punishable by the same prison sentences that apply to rape of any minor that is accomplished by force, duress or threats. This would be the case irrespective of age difference, including whether the perpetrator themselves was a minor, and including a minor with developmental disabilities themselves.

4) **Increased Penalties and Lack of Deterrent Effect:** 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.) Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment. (*Ibid.*)

   In a 2014 report, the Little Hoover Commission also addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public

safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.)

5) **Argument in Support**: According to the *California District Attorneys Association*, "Minors are already vulnerable to sexual predators because of their age. That vulnerability is compounded when a child suffers from a mental disorder, a developmental disability, or a physical disability. AB 808 will hold child rapists properly accountable for their crimes."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 808 is confusing and unnecessary. The bill takes a law, Penal Code section 261(a)(1), that is intended to protect adults who are unable to consent to sexual intercourse due to a mental/physical disorder or developmental disability and extends it to minors. This is problematic for two reasons. Case law about whether a particular adult's disability rises to the level of the inability to consent to sexual intercourse has been a fact specific inquiry on a case by case basis. (Capacity to Consent to Sexual Activity Among those with Developmental Disabilities, Stanford Intellectual and Developmental Disabilities Law and Policy Project available online at https://law.stanford.edu/publications/capacity-to-consent-to-sexual-activity-among-those-with-developmental-disabilities/) Contrast, existing law already prohibits sexual intercourse with a minor, regardless of whether or not the minor consented. A minor can never "consent" to sexual intercourse with an adult; it is always illegal. Children are already protected from sexual intercourse and consent is never an issue.

   "Further, the law already has harsh penalties for anyone who has sexual intercourse with a minor, particularly a younger minor. For instance, the penalty for sexual intercourse with a minor who is 10 years or younger is already 25 years to life much more than the 9, 11 or 13 years proposed by AB 808. Any sexual contact with a child under 14 years old, including touching with a lewd or lascivious intent, is already punishable by 3, 6, or 8 years."

7) **Prior Legislation**:

   a) AB 1335 (Maienschein), of the 2013-2014 legislative session, would have made specified sex crimes committed against developmentally disabled victims, as defined, qualifying crimes under the One Strike life-term sentencing scheme and the vulnerable victim sentence enhancement, as specified. AB 1335 was held in the Senate Appropriations Committee.

   b) SB 922 (Knight), of the 2013-2014 legislative session, would have provided that a sex crime against a mentally disordered, developmentally disabled, or physically disabled person by force, duress or threats shall be punished by the same prison sentences that apply to sex crimes accomplished by force, duress or threats against a child under the age of 14. SB 922 was not heard in this committee at the author's request.

   c) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, enacted "Chelsea's Law", which increased the punishment for rape, sodomy, oral copulation, or sexual penetration upon a child who is under 14 years of age to imprisonment in state prison for 9, 11, or 13 years, and if committed upon a minor who is 14 years of age or older, to imprisonment in state prison for 7, 9, or 11 years.

d) AB 313 (Zettel), Chapter 569, Statutes of 1999, added deaf and developmentally disabled persons as qualifying victims to the existing enhancement statute for serious crimes committed against the elderly, children under age 14, and persons who are either blind, a paraplegic, or quadriplegic.

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
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
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

California Public Defenders Association (CPDA)

Analysis Prepared by: Cheryl Anderson / 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 819 (Bryan) – As Introduced February 13, 2023

SUMMARY: Provides that a third or subsequent fare evasion violation, as specified, is no longer a misdemeanor punishable by imprisonment in county jail for a period of not more than 90 days, and shall be a fine of not more than $400.

EXISTING LAW:

1) Provides that the following acts are, upon a first or second violation, an infraction punishable by a fine not to exceed $250 and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days:

   a) Evasion of the payment of a fare of the system, including entering an enclosed area of a public transit facility beyond posted signs prohibiting entrance without obtaining a fare or entering a transit vehicle without valid fare;

   b) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare; and,

   c) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket, as specified. (Pen. Code, § 640, subds. (a)(1) & (c)(1)-(3).)

2) Provides that a third or subsequent violation of the above acts is a misdemeanor punishable by a fine of not more than $400, or by imprisonment in a county jail for a period of not more than 90 days, or both that fine and imprisonment. (Pen. Code, § 640, subd. (a)(1).)

3) Provides that the following acts are infractions punishable by a fine not to exceed $250 and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days:

   a) Eating or drinking in or on a system facility or vehicle in areas where those activities are prohibited by that system;

   b) Playing unreasonably loud sound equipment on or in a system facility or vehicle, or failing to comply with the warning of a transit official related to disturbing another person by loud or unreasonable noise;

   c) Smoking in or on a system facility or vehicle in areas where those activities are prohibited by that system;

d) Expectorating upon a system facility or vehicle;

e) Skateboarding, roller skating, bicycle riding, roller blading, or operating a motorized scooter or similar device, as specified, in a system facility, vehicle, or parking structure; and,

f) Selling or peddling goods. (Pen. Code, § 640, subds. (a)(1) & (b)(1)-(6).)

4) Provides that the following acts are punishable by a fine of not more than $400, by imprisonment in a county jail for a period of not more than 90 days, or by both a that fine and imprisonment:

a) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior;

b) Carrying an explosive, acid, or flammable liquid in a public transit facility or vehicle;

c) Urinating or defecating in a system facility or vehicle, except in a lavatory, unless the person cannot comply with this prohibition because of a disability, age, or a medical condition;

d) Willfully blocking the free movement of another person in a system facility or vehicle; and,

e) Willfully tampering with, removing, displacing, injuring, or destroying any part of a facility or vehicle of a public transportation system. ((Pen. Code, § 640, subds. (a)(1)) & (d)(1)-(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Enforcement of fare evasion is discriminatory. People who face criminal charges for not paying their transit fare are disproportionately people of color. Today, people who evade fare 3 times, can be charged $400 in fines, spend up to 90 days in jail, or both. It costs $245 a day to incarcerate someone in LA County jail. The cost of incarcerating someone for 90 days in jail could pay for 37 years of LA Metro monthly passes.

"AB 819 will remove the option of incarcerating and charging someone with a misdemeanor for fare evasion. Studies from across the country have shown that fare enforcement disproportionately targets black and brown people, and they face harsher penalties when they are stopped. Removing harmful policies from state law will guide California into a more equitable future."

2) **Need for the Bill:** Under current law, a first or second fare evasion violation is an infraction punishable by a fine of up to $250 and up to 48 hours of community service. A third or subsequent fare evasion violation is a misdemeanor punishable by a fine of up to $400 or by up to 90 days in county jail, or both. Under this bill, a third or subsequent fare evasion

violation would no longer be a misdemeanor with potential imprisonment in county jail. Instead, a third or subsequent violation would be only an infraction punishable by a $400 fine.

The consequences for fare evasion can be harsh. They are generally more severe than for similar violations, such as toll violations or parking violations. (See e.g., Veh. Code, § 40200, subd. (a) [standing or parking violation is subject to a civil penalty].) Unlike those other violations, a fare evasion violation could result in 90 days in county jail. For undocumented people, a violation may result in deportation. Moreover, according to one report, "Studies from across the country have shown that fare enforcement disproportionately targets black and brown people, and that people of color face harsher penalties when they were stopped." (Transit Center, *A Fare Framework: How transit agencies can set fare policy based on strategic goals*, (Oct. 2, 2019) p. 14 <https://transitcenter.org/wp-content/uploads/2019/10/FareFramework-1.pdf> [last visited Mar. 15, 2023].)

The harshness of the penalties and the disparities in their application have led researchers, advocates, and transit agencies to question the utility of continuing to criminalize fare evasion. According to recent report by the Transit Cooperative Research Program, "There is also an increasing interest among organizations such as transit agencies and transit and social justice advocates in decriminalizing fare evasion to address concerns that criminal citations are criminalizing poverty and to better align penalties for fare evasion with the severity of the offense." (Transit Cooperative Research Program, *Report 234, Measuring and Managing Fare Evasion*, (2022) p. 7 <https://nap.nationalacademies.org/read/26514/chapter/1> [last visited Mar. 15, 2023.]) It added, "Among the issues are the appropriateness of criminal penalties and the possibility of a criminal record relative to the price of transit fare as well as the affordability and equity of potentially sizable fines for individuals with low or no income. Attitudes about fare enforcement and penalties are changing, particularly where fare evasion entails criminal penalties." (*Id.* at pp. 7-8.)

In 2010, the San Francisco Municipal Transportation Agency (SFMTA) decriminalized fare evasion. Since that time, "SFMTA has not seen measurable increases in fare evasion, nor has it seen revenue decreases affecting the agency's bottom line." (Transit Center, *supra*, at p. 14.)

SB 882 (Hertzberg) provided that minors are not subject to criminal penalties for evading a transit fare. (Chapter 167, Statutes of 2016.) Instead, fare evasion by a minor may result in an administrative fee of $125 for a first or second offense or $200 for a third or subsequent offense. (Pen. Code, § 640, subd. (g).) This bill would limit the penalty for fare evasion by an adult to a $400 fine, eliminating the classification of the offense as a misdemeanor and the possibility of incarceration in county jail for a violation.

3) **Argument in Support**: According to *Streets for All*, "Enforcement of fare evasion is discriminatory. People who face criminal charges for not paying their transit fare are disproportionately people of color. Today, people who evade fare 3 times, can be charged $400 in fines, spend up to 90 days in jail, or both. These numbers just don't add up. It costs $245 a day to incarcerate someone in LA County jail. The cost of incarcerating someone for 90 days in jail could pay for 37 years of LA Metro monthly passes.

"Fare evasion violations disproportionately impact low income riders of color. Studies in Los

Angeles as well as Washington DC, New York City, Portland, Minneapolis, Seattle, and Cleveland have shown that fare enforcement disproportionately targets black and brown communities, and that people of color face harsher penalties when they are stopped. In Washington, a report found that 91% of citations and summonses were issued to Black people.

"In 2010, the San Francisco Municipal Transportation Agency (SFMTA) decriminalized fare evasion. 'In the nearly 10 years since this decision, SFMTA has not seen measurable increases in fare evasion, nor has it seen revenue decreases affecting the agency's bottom line.'

"The Labor Community Strategy Center presents figures that show from each year from 2012 to 2015, black riders—who make up about 19 percent of all bus and rail riders—were hit with more than 50 percent of all fare evasion tickets. 'The records that we have been able to get so far indicate that there is disparate treatment, and that African Americans are stopped more regularly, ticketed, and arrested.'

"AB 819 will remove the option of incarcerating and charging someone with a misdemeanor for fare evasion. Studies from across the U.S. have shown that fare enforcement disproportionately targets black and brown people, and they face harsher penalties when they are stopped. Removing harmful policies from state law will guide California into an equitable future."

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

5) **Related Legislation**: AB 1735 (Low), extends the authority of the Santa Clara Valley Transportation Authority to issue prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government.

6) **Prior Legislation**:

   a) AB 1337 (Lee), Chapter 534, Statutes of 2021, extends the authority of specified transit district entities to issue prohibition orders to include the property, facilities, and vehicles upon which it owes policing responsibilities to a local government, and expands current law to make entering or remaining on those properties without permission a misdemeanor.

   b) SB 882 (Hertzberg), Chapter 167, Statutes of 2016, provides that minors shall not be subject to criminal penalties for evading a transit fare.

   c) AB 869 (Cooper), of the 2015-2016 Legislative Session, would have required the issuance of a notice of fare evasion or passenger conduct violation if a fare evasion or passenger conduct violation was observed by a person authorized to enforce the ordinance. AB 869 was held in the Senate inactive file.

REGISTERED SUPPORT / OPPOSITION:

Support

Streets for All (Sponsor)
Activesgv
Calbike
California Public Defenders Association (CPDA)
Marin County Bicycle Coalition
Norwalk Unides
San Diego County Bicycle Coalition
San Francisco Bicycle Coalition
The Happy City Coalition

Opposition

None

Analysis Prepared by: Andrew Ironside / 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 855 (Jackson) – As Introduced February 14, 2023

SUMMARY: Lowers interest on victim restitution orders from a rate of 10% per year to not more than 1% per year. Lowers the interest rate on delinquent fines, fees, and restitution orders referred to the Franchise Tax Board (FTB) for collection to no more than 1% per year.

EXISTING LAW:

1) Establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const. art I, § 28, subd. (b).)

2) Requires the sentencing court to order the defendant to pay victim restitution to fully reimburse the victim for economic losses resulting from the defendant's criminal conduct. (Pen. Code, § 1202.4, subd. (f)(3).)

3) Provides that the restitution order shall include interest, at the rate of 10% per annum,that accrues as of the date of sentencing or loss, as determined by the court. (Pen. Code, § 1202.4, subd. (f)(3)(G).)

4) Provides that a defendant's inability to pay shall not be a consideration in determining the amount of a restitution order. (Pen. Code, § 1202.4, subd. (g).)

5) Specifies that a victim restitution order is enforceable as a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. (Pen. Code, §§ 1202.4, subd. (i), & 1214, subd. (b).)

6) States that victims shall have access to all resources available under the law to enforce the victim restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. (Pen. Code, §1214, subd. (b).)

7) States that any portion of a victim restitution order that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, after a term in custody, or after completing diversion is enforceable by the victim. (Pen. Code, §§ 1202.4, subd. (l) & 1214, subd. (b).)

8) Allows local collection programs to continue to enforce victim restitution orders once a defendant is no longer on probation, postrelease community supervision, or mandatory supervision or after completion of a term in custody. (Pen. Code, § 1214, subd. (b).)

9) Provides that victim restitution orders that are due and payable may be referred to the FTB for collection under guidelines prescribed by the FTB. (Rev. & Tax Code, § 19280, subds. (a)(1)(A) & (a)(2)(A).)

10) Authorizes interest to be imposed on delinquent payments. (Rev. & Tax Code, § 19280, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The California Constitution entitles the victim of a crime to restitution. Existing law requires the court in each criminal case to order a convicted defendant to pay restitution, as specified. Existing law, 1202.4(3)(g), requires the order of restitution to include interest at the annual rate of 10%. Under existing law, certain delinquent payments, including payments for fines, fees, and restitution, may be referred to the Franchise Tax Board for collection. Existing law imposes interest on these delinquent payments.

   "This bill would change the annual interest rate on restitution orders and the annual interest rate charged by the Franchise Tax Board on certain delinquent payments, including fines, fees, and restitution, to no more than 1%."

2) **Victim Restitution**: The purpose of victim restitution is to reimburse the victim for economic loss caused by the crime. (*People v. Giordano* (2007) 42 Cal.4th 644, 652.) In 1982, California voters passed Proposition 8, the Victims' Bill of Rights, which added article I, section 28, subdivision (b) to the California Constitution, which gives victims the right to seek and secure restitution from the persons convicted of the crimes causing the loss that the suffer. (*People v. Gross* (2015) 238 Cal.App.4th 1313, 1317-1318.) "A victim's right to restitution is, therefore, a constitutional one; it cannot be bargained away or limited, nor can the prosecution waive the victim's right to receive restitution." (*Ibid.*)

   As directed by the voters, the Legislature enacted Penal Code section 1202.4 to implement the Victims' Bill of Rights. (*Gross, supra*, 238 Cal.App.4th at p. 1318; *People v. Seymour* (2015) 239 Cal.App.4th 1418, 1435.) This statute provides that "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order." (Pen. Code, § 1202.4, subd. (f).) The statute further provides that a "defendant's inability to pay shall not be consideration in determining the amount of a restitution order." (Pen. Code, § 1202.4, subd. (g).) Rather, victim restitution orders must be of a dollar amount that is sufficient to fully reimburse the victim, which can include an assortment of expenses such as medical expenses, mental health counseling expenses, wages or lost profits, noneconomic losses like psychological harm, actual and reasonable attorney's fees, and relocation fees. The victim restitution order must also include interest at the rate of 10%t per annum (Pen. Code, § 1204.5, subd. (f)(3).)

   Payment of victim restitution goes directly to the victim and compensates them for economic losses they have suffered because of the defendant's crime, i.e., to make the victim reasonably whole. (*People v. Guillen* (2013) 218 Cal.App.4th 975, 984.) A victim restitution

order is an enforceable civil money judgment, and typical post-judgment enforcement tools are available to the victim. (Pen. Code, § 1202.4, subd. (i).) Victims have access to all available resources to enforce the order, including wage garnishment and lien procedures, even if the defendant is no longer in custody or on supervision. (*Ibid.*)

Victim restitution can easily exceed amounts in the tens of thousands of dollars, on top of which is added accruing interest. Most people can never afford to pay off the restitution order. Instead, they live with debt. This has had serious consequences for people of color, deepening the racial wealth gap of Black persons in particular. In Los Angeles County, though Black people make up 8% of the population, they were charged with 20% of all dollars owed in restitution. (https://www.law.berkeley.edu/article/restitution-relief-policy-advocacy-clinic-spearheads-reform-efforts-to-lift-lifelong-burden/.)

This bill would limit the interest imposed on victim restitution to no more than 1% per year rather than the required 10% per year under current law.

Victim restitution orders can be referred to the FTB for collection and crime victims are entitled to their preference of collection agencies. Interest may be imposed on delinquent amounts. (Rev. & Tax. Code, § 19280.)

This bill would also limit the interest rate on delinquent fines, fees, and restitution orders referred to the Franchise Tax Board (FTB) for collection to no more than 1% per year. This bill has been double referred to the Revenue and Taxation Committee.

3) **Argument in Support**: According to the *California Public Defenders Association*, "A criminal defendant who causes harm must pay restitution to the crime victim to make that person whole. Restitution not only serves to recompense the victim for a loss, but it also aids in the rehabilitation of the offender.

"Current law requires the imposition of interest on a restitution order at the rate of 10 per cent per annum. This has been the rate for many years – even though it seems to be untethered to any rate available from a financial institution and is unreasonably high. It is certainly much higher than what a financial institution might pay if the crime victim were able to keep money in a bank account. According to the Federal Deposit Insurance Corporation, the average national deposit rate for a savings account is 0.35 per cent. For an interest-bearing checking account the average national rate is 0.06 per cent. (https://www.fdic.gov/resources/bankers/national-rates/index.html as of March 7, 2023.)

"AB 855 specifies that the restitution interest rate shall not exceed one per cent per annum – a rate above the national average determined by the FDIC. In addition, the interest rate on unpaid fines, fees, and restitution orders referred to collection to the Franchise Tax Board cannot exceed one per cent per annum.

"AB 855 makes a reasonable change that is consistent with interest rates available from the financial markets."

4) **Argument in Opposition**: According to the *California Association of Judgment Professionals*, "A Victim's Restitution *"[s]hall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the*

result of the defendant's criminal conduct, including, but not limited to...profits lost by the victim". An interest rate "not exceeding 1 percent per annum", as proposed in this measure, does not compensate the Victim for the economic loss of use of the funds owed. This proposed interest rate does not fully reimburse the Victim for his/her economic losses and it rewards the defendant with an abnormally low interest rate. This proposal incentivizes the defendant to not pay the ordered restitution to the Victim. (footnote omitted.)"

5) **Related Legislation**:

a) AB 1186 (Bonta), would remove the ability of the court to require a minor to pay restitution to the victim. AB 1186 is pending hearing in this committee.

b) AB 1551 (Gipson), would require the court to order the defendant to pay restitution in the form of child maintenance to each of the victim's children until each child reaches 18 years of age for specified crimes such as vehicular manslaughter while intoxicated. AB 1551 is pending hearing in this committee.

6) **Prior Legislation**:

a) AB 1803 (Jones-Sawyer), Chapter 494, Statutes of 2022, exempted a person who meets the criteria for a waiver of court fees and costs from being obligated to pay the filing fee for specified expungement petitions, and prohibited a court from denying expungement relief to an otherwise qualified person, and who meets the criteria, as specified, for a waiver of court fees and costs, solely on the basis that the person has not yet satisfied their restitution obligations.

b) SB 1106 (Wiener), Chapter 734, Statutes of 2022, prohibited the denial of a petition for expungement relief, the denial of release on parole to another state, and the denial of a petition for reduction of a conviction, solely on the basis that the person has not yet satisfied their restitution obligations.

c) AB 1530 (Skinner), Chapter 359, Statutes of 2010, provided express authority for the FTB to collect orders of restitution awarded to the FTB in criminal proceedings in the same manner and with the same priority as tax liabilities.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Treasurer (Co-Sponsor)
California Public Defenders Association (CPDA)
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Initiate Justice
Legal Services for Prisoners With Children
Root & Rebound

Young Women's Freedom Center

Opposition

California Association of Judgment Professionals

Analysis Prepared by: Cheryl Anderson / 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 862 (Bauer-Kahan) – As Introduced February 14, 2023

SUMMARY: Requires county sheriffs to compile and submit data to the Board of State and Community Corrections (BSCC) on rehabilitative opportunities for incarcerated individuals. Specifically, **this bill**:

1) Requires the sheriff in each county to compile and submit the following data to the BSCC:

   a) A list of all the educational opportunities provided in each county jail;

   b) A list of all of the rehabilitative opportunities provided in each county jail;

   c) A list of all the exercise opportunities in each county jail;

   d) The number of participants and the cost of administering these programs; and,

   e) The overall recidivism rates for each county jail.

2) Defines "recidivism" means that an individual received a new felony or misdemeanor conviction or probation violation within three years of their previous criminal conviction; and provides that for statistical purposes, any individual who is released from custody and reoffends shall be counted as part of the data.

3) Provides that on or before July 1, 2025, the BSCC must provide a report to the Legislature based upon the findings of the data collected.

4) States that these provisions will become inoperative on July 1, 2029 and is repealed on Janaury 1, 2030.

EXISTING LAW:

1) Establishes the BSCC to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. (Pen. Code, § 6024, subds. (a) & (b).)

2) Provides that BSCC's mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice

populations. (Pen. Code, § 6024, subd. (b).)

3) States that it is the duty of the BSCC to collect and maintain available information and data about state and community corrections policies, practices, capacities, and needs. (Pen. Code, § 6027, subd. (a).)

4) Authorizes BSCC to do either of the following:

   a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,

   b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

5) Provides that any report required or requested by law to be submitted by a state or local agency to the Members of either house of the Legislature must be submitted as a printed copy to the Secretary of Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel. Each report shall include a summary of its contents, not to exceed one page in length. If the report is submitted by a state agency, that agency shall also provide an electronic copy of the summary directly to each member of the appropriate house or houses of the Legislature. (Gov. Code, § 9795, subd (a)(1)(A).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 862 requires county jail data collection aimed at understanding the spending and effectiveness of the county's rehabilitation programs. Counties have an outsized role in the criminal justice system, and understanding their rehabilitation programming, especially after realignment, should be a priority. This information provides an opportunity for the legislature to make fully informed decisions on the best use of scarce funding, aimed at programs that show proven rates of reducing recidivism."

2) **Collecting and Analyzing Data:** The Public Policy Institute of California (PPIC) released a report in 2017 that took a closer look at recidivism rates throughout the state. This report examined the effect of AB 109 (Comm. on Budget), Chapter 15, Statutes of 2011, which created criminal justice realignment. AB 109 was enacted to place lower risk offenders into county jails due to overcrowding in state prisons. For this report the PPIC used data from BSCC, the California Department of Corrections and Rehabilitation and DOJ, among others. The PPIC stated "There are many ways of measuring recidivism.[1] The state has adopted reconviction—often considered a more accurate measure of reoffending behavior, relative to rearrest—as its primary recidivism measure. Reconvictions also represent a substantial

[1] Indeed, it is important to note that the best measures of recidivism depend on the purpose of the analysis. For example, if the primary goal is to understand the effect of a policy change on the cost of operating correctional institutions, then the most appropriate metric to examine may be returns to custody. If the goal is to understand how a policy change has affected the demands placed on police departments, then the best recidivism measure may be rearrest rates. No single measure of recidivism fits all purposes.

resource burden and thus may be of particular interest to correctional systems. However, when comparing the reconviction rates of individuals released before and after realignment, it is important to consider how realignment changed the likelihood that criminal justice systems would pursue formal convictions. Before realignment, individuals who violated the conditions of their parole or who were suspected of a new offense could be revoked to prison custody. Under realignment, most offenders can only be sent to prison following conviction on a new, prison-eligible offense—meaning that correctional systems may be shifting away from revocations and toward more formal rearrests and reconvictions". (Realignment and Recidivism in California (ppic.org) (2017) at p.9)

This bill would require every county sheriff to collect, analyze, and report recidivism data to the BSCC. In addition, this bill would require the BSCC to take the aforementioned data and compile a report to the Legislature.

Currently, Penal Code section 6027 allows the BSCC to define recidivism. The BSCC considers the following terms when defining the adult definition of recidivism (https://www.bscc.ca.gov/wp-content/uploads/AB-1050-Key-Term-Definitions.pdf at p.2):

> **Recidivism** is defined as conviction of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction. [2]
>
> **Supplemental Measures**: This definition does not preclude other measures of offender outcomes. Such measures may include new arrest, return to custody, criminal filing, violation of supervision, and level of offense (felony or misdemeanor).
>
> **Recidivism Rates**: While the definition adopts a three-year standard measurement period, rates may also be measured over other time intervals such as one, two, or five years.

This bill defines recidivism for purposes of reporting to BSCC in similar language as the BSCC defines recidivism.

3) **Governor's Veto:** AB 731 (Bauer-Kahan), of the 2021-2022 Legislative Session, which was nearly identical to this bill, was vetoed by the Governor. In his veto message, the Governor said:

"This bill requires the sheriff in each county to compile and send extensive data to the Board of State and Community Corrections (Board) about educational and rehabilitative programs in county jail and their success rates in reducing recidivism. It further requires the Board to report to the legislature.

"While I agree that data relating to the efficacy of local programs is important, this bill is overly broad and creates a large mandate, potentially costing the state millions of dollars. With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education,

[2] "Committed" refers to the date of offense, not the date of conviction

health care, public safety and safety-net programs.

"The Legislature sent measures with potential costs of well over $20 billion in one-time spending commitments and more than $10 billion in ongoing commitments not accounted for in the state budget. Bills with significant fiscal impact, such as this measure, should be considered and accounted for as part of the annual budget process. For these reasons, I cannot sign this bill."

This bill does not address the Governor's veto message.

4) **Argument in Support**: According to *The California Public Defender's Association,* "AB 862 will require County Sheriffs to report the nature of their anti-recidivism programs, and those programs' success rates in reducing recidivism. Recidivism can be reduced through rehabilitation by addressing the criminogenic needs of individuals within the criminal justice system. Local Sheriffs are responsible for providing the services that address these individuals' needs. Looking at success rates will afford local and State decision makers with the knowledge necessary to efficiently allocate limited resources to those programs that best reduce recidivism and encourage rehabilitation."

5) **Argument in Opposition**: According to *The California State Sheriffs' Association,* "Sheriffs across the state provide meaningful rehabilitative programming to jail inmates with the desire to enhance formerly incarcerated persons' re-entry into society and reduce the likelihood that people re-offend. Unfortunately, the bill is ambiguous and creates unreasonable expectations about what data individual jails possess about recidivism that may take place in other jurisdictions. As a result, the bill would likely be interpreted as requiring county jails to ascertain from courts, other jails, or state prisons, potentially including such entities in other states, information regarding subsequent convictions. Requiring such would be very expensive and exceedingly time consuming; a problem exacerbated by the fact that the bill provides no funding for its requirements."

6) **Related Legislation**: SB 519 (Atkins), would expand the Board of State and Community Correction's (BSCC) mission to include the promotion of legal and safe conditions for youth, inmates, and staff in local detention facilities. SB 519 is pending in the Senate Committee on Public Safety.

7) **Prior Legislation**:

   a) AB 731 (Bauer-Kahan), of the 2021-2022 Legislative Session, would have required the sheriff in each county to compile and send data to the Board of State and Community Corrections (BSCC) on antirecidivism programs and success rates in reducing recidivism, and report the data to the Legislature. AB 731 was vetoed by the Governor.

   b) AB 2483 (Bauer-Kahan), of the 2019-2020 Legislative Session was substantially similar to this bill and AB 731. AB 2483 was vetoed by the Governor.

   c) AB 152 (Gallagher), of the 2017-2018 Legislative Session, would have required the Board of State and Community Corrections (BSCC) to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence or who are placed on postrelease community supervision. AB 152 was held on suspense in the Assembly

Appropriations Committee.

d) AB 2521 (Hagman),), of the 2013-2014 Legislative Session, would have required, on and after July 1, 2015, the Board of State and Community Corrections (BSCC), in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates, as defined, of all persons who receive sentences for felonies punishable by imprisonment in a county jail, or who are placed on postrelease community supervision on or after July 1, 2015. AB 2521 was held on the Senate Committee on Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)
Initiate Justice

Oppose

California State Sheriffs' Association

Analysis Prepared by: Elizabeth Potter / 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 881 (Ting) – As Introduced February 14, 2023

SUMMARY: Requires qualifying low-income trial jurors to be paid at least $100 a day in criminal cases. Specifically, **this bill**: Provides that the fee for jurors in criminal cases is $100 a day for each day the juror is required to report for service if:

1) The juror's household income for the past 12 months is less than 80 percent of the area median income of the county in which the superior court is located; and

2) The juror meets one of the additional following criteria:

   a) The juror's employer does not compensate for any trial jury service;

   b) The juror's employer does not compensate for trial jury service for the estimated duration of the criminal jury trial;

   c) The juror is self-employed; or,

   d) The juror is unemployed.

EXISTING FEDERAL LAW: Guarantees the right of the accused, in all criminal prosecutions, to a speedy and public trial, by an impartial jury of the State and district where the crime was committed. (U.S. Const., 6th Amend.)

EXISTING STATE LAW:

1) Provides that a trial by jury is an inviolate right. (Cal. Const., art. I, § 16.)

2) Establishes the Trial Jury Selection and Management Act, which applies to the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial courts of the State. (Code Civ. Proc., § 190 et seq.)

3) States the policy of the State of California is that all persons selected for jury service must be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the state, as specified; that it is an obligation of all Californians to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civ. Proc., § 191.)

4) Provides that all persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by

the court. (Code Civ. Proc., § 197.)

5) Provides that no eligible person shall be exempt from service as a trial juror because of their economic status. (Code Civ. Proc., § 204.)

6) Sets the fee for trial jurors in civil and criminal cases, at $15 a day for each day's attendance as a juror after the first day. (Code Civ. Proc., § 215.)

7) Provides that a juror who is employed by a federal, state, or local government entity, or by any other public entity as defined, and who receives regular compensation and benefits while performing jury service, shall not be paid the fee. (Code Civ. Proc., § 215, subd. (b).)

8) Requires the Judicial Council to sponsor a pilot program for two fiscal years to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation. No later than September 1, 2026, the Judicial Council shall provide a report to the Legislature describing the findings of the pilot program and providing information for promoting juror diversity. (Code Civ. Proc., § 241.)

9) Authorizes the Superior Court of San Francisco, to conduct a pilot program to analyze and determine whether paying certain low-income trial jurors $100 for each day they are required to report for service as a trial juror promotes a more economically and racially diverse trial jury panel. (Code Civ. Proc., § 240.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In order to increase jury diversity in California, juror pay must be raised so that economic hardship is no longer a barrier to the fair delivery of justice. In 2021, Governor Newsom signed AB 1452 (Ting), which created the 'Be The Jury' pilot program at San Francisco Superior Court where jury pay for criminal cases was increased to $100 for low to moderate income San Franciscans. The results have produced more economically and racially diverse jury panels that more accurately reflected the City's demographics. Results have shown 60% of participants identified as people of color, and 81% said they couldn't have participated without this financial assistance. AB 881 would apply the 'Be The Jury' program statewide by increasing jury pay for criminal cases to $100 per day of jury service for low to moderate-income Californians. It also makes the $15 the base - not the cap - giving courts flexibility to increase pay for civil or criminal cases should they choose to."

2) **Constitutional Right to a Representative Jury**: The Sixth Amendment states that in all criminal prosecutions, the accused shall enjoy the right to trial, by *an impartial jury*. The Sixth Amendment right to an impartial jury is rooted in "the essential demands of fairness." (*Aldridge v. United States* (1931) 283 U.S. 308, 310.)

   In the landmark U.S. Supreme Court case *Hernandez v. Texas* (1954) 347 U.S. 475, the Court recognized the necessity of inclusion to achieve fairness in our criminal justice system when it held that the defendant, a Mexican-American migrant farm worker convicted for the murder of another man, did not get a fair trial in a county where non-whites, and specifically

Mexican-Americans, were routinely prohibited from serving on the jury. The Supreme Court has since attempted to address these issues by requiring juries to be selected from a "fair cross-section" of society. "The selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial. (*Taylor v. Louisiana* (1975) 419 U.S. 522, 533.) Jurors must be selected in a manner which does not systematically exclude, or substantially underrepresent, the members of any identifiable group in the community." (*People v. Newton* (1970) 8 Cal.App.3d 359, 388.)

In *Taylor v. Louisiana*, the Supreme Court described the purpose of the fair cross-section requirement as (1) "guard[ing] against the exercise of arbitrary power" and ensuring that the "common sense judgment of the community" will act as "a hedge against the overzealous or mistaken prosecutor," (2) preserving "public confidence in the fairness of the criminal justice system," and (3) implementing our belief that "sharing in the administration of justice is a phase of civic responsibility." (*Taylor, supra,* (1975) 419 U.S. at p. 530) Jury pools that result in underrepresentation due to systematic exclusion of a group in the jury-selection process violates the fair cross section guarantee. (*Duren v. Missouri* (1979) 439 U.S. 357, 364.)

Further, it is the policy of the State of California that all qualified persons have an equal opportunity to be considered for jury service in the state. (Code Civ. Proc., § 191.) In order to prevent systemic exclusion of low-income jurors, and to facilitate the selection of diverse grand juries that represent the demographics of their counties, this bill would require, in criminal trials only, that low-income jurors be paid $100 a day for each day they required to report for service. To qualify, the juror's household income for the past year must be less than 80% of the median income of the county and, the juror's employer cannot compensate for trial service, or the juror is unemployed or self-employed. Jurors who do not meet these requirements will continued to be paid not less than $15 per day for their service.

3) **Diverse Juries Make Better Decisions**: Research shows that diverse juries "deliberated longer and considered a wider range of information than did homogeneous groups." (Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations* (2006) 90 J. Personality and Social Psychology 597, 606.) Being part of a diverse group seems to make people better jurors; for example, when white people were members of racially mixed juries, they "raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related issues." (*Ibid.*) People on racially mixed juries "are more likely to respect different racial perspectives and to confront their own prejudice and stereotypes when such beliefs are recognized and addressed during deliberations." (Ramirez, *Affirmative Jury Selection: A Proposal to Advance Both the Deliberative Ideal and Jury Diversity* (1998) 7 Univ. Chicago Legal Forum 161, 164.) In addition, the decisions diverse juries render are more likely to be viewed as legitimate by the public. (*Ibid.*)

4) **Service as a Trial Juror is Cost Prohibitive for Many Californians**: One factor contributing to systemic underrepresentation of diverse jurors is that jury service is cost-prohibitive for many low-income Californians. Under existing law trial jurors are paid $15 per day. (Code Civ. Proc., § 215.) They are not compensated for the first day of service. (*Ibid.*) California law does not require employers to pay employees for time lost from work due to jury service. (*People v. Kwee* (1995) 39 Cal.App.4th 1, 4.) And, those compelled to

serve often use sick, vacation, or paid leave. (Lab. Code, § 230, subd. (l).)

California's current minimum of $15 per day was last adjusted in 2000, by AB 2866 (Migden), Chapter 127, Statutes of 2000. AB 2866 raised the minimum from $5 to $15. Prior to AB 2866, pay for trial jurors had not been raised since it was enacted in the 1950s. As measured by the Consumer Price Index (CPI), $15 in 2000 is worth over $26.59 today based on the CPI inflation calculator of the U.S. Bureau of Labor Statistics. Worse, the $5 jurors were paid for their service in the 1950s is worth over $63 today. In a 2004 Judicial Council report, the blue ribbon commission called the current $15 rate paid to California jurors for daily service "insulting." (Judicial Council of California, *Task Force on Jury System Improvements* (April 2004) <https://www.courts.ca.gov/documents/tfjsi_final.pdf> [as of March 10, 2023].)

By comparison, federal jurors are paid $50 a day. While the majority of federal jury trials last less than a week, jurors can receive up to $60 a day after serving 10 days on a trial. (U.S. Courts, *Juror Pay* < https://www.uscourts.gov/services-forms/jury-service/juror-pay#:~:text=Petit%20Jury,in%20lieu%20of%20this%20fee> [as of March 10, 2023].) Also, despite having one of the highest costs of living[1], California pays its jurors less than average compared to other states[2]:

State	Rate	State	Rate	State	Rate
Arkansas	$50	Louisiana	$25	Michigan	$12.50
Colorado	$50	North Dakota	$25	Arizona	$12
Connecticut	$50	Pennsylvania	$25	Idaho	$10
Georgia	$50	Delaware	$20	Kansas	$10
Massachusetts	$50	Minnesota	$20	New Hampshire	$10
South Dakota	$50	Oklahoma	$20	Ohio	$10
Alabama	$40	Utah	$18.50	Oregon	$10
Nevada	$40	Wisconsin	$16	Tennessee	$10
New York	$40	**California**	**$15**	Washington	$10
Nebraska	$35	Indiana	$15	New Mexico	$7.50
District of Columbia	$30	Maine	$15	Missouri	$6
Florida	$30	Maryland	$15	Texas	$6
Alaska	$25	Rhode Island	$15	Mississippi	$5
Hawaii	$30	West Virginia	$15	New Jersey	$5
Iowa	$30	Montana	$12	Illinois	$0
Vermont	$30	North Carolina	$12	South Carolina	$0
Virginia	$30	Kentucky	$12.50		

California's $15 current daily pay is pennies on the dollar compared to that could be earned at work— the total daily compensation for jury service is the minimum pay for one hour of

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[1] California has the fourth highest cost of living, followed by Massachusetts, Washington D.C. and Hawaii, all of which pay their jurors at least double than the rate of California. (See Missouri Economic Research Center, *Cost of Living Data Series* <https://meric.mo.gov/data/cost-living-data-series> [as of March 10, 2023].)

[2] This table was built from data from the National Center for State Courts (NCSC). (NCSC, *Juror Compensation in the United States* <https://www.ncsc-jurystudies.org/__data/assets/pdf_file/0024/76191/NCSC-Report-Juror-Compensation_P5.pdf> [as of March 10, 2023].)

work for most Californians,[3] and well below the daily equivalent of the poverty threshold. As Californians have found it harder to make ends meet in light of inflation and increased costs of living, jury compensation has not progressed. Jurors sacrifice both their time and earnings in service of the justice system. The low compensation is felt especially by self-employed individuals, parents without the means to obtain childcare and part or fulltime workers who receive no compensation from their employers. As stated in the Assembly Floor Analysis for 1452 (Ting), Chapter 717 Statutes of 2021, "Because many low-income families cannot afford to forfeit days, weeks, or months of their salary, many minimum wage, low-income workers or workers file a claim of financial hardship and are excused from service. As a result, jury pools tend to be composed of people who can afford to serve unpaid or who have employers who'll pay them while they're serving."

Even though jurors are compensated far less than what they would earn for a day of work in California, the penalty for failing to serve is steep: the court may find the juror in contempt of court, punishable by fine, incarceration, or both. The monetary sanctions imposed range from $250 to $1,500. (Code Civ. Proc., § 209.)

5) **Be The Jury Pilot Program**: AB 1452 (Ting), Chapter 717, Statutes of 2021, authorized the Superior Court of San Francisco to conduct a pilot program to determine whether paying low-income trial jurors $100 per day in criminal cases promotes a more economically and racially diverse trial jury panel. (Code Civ. Proc., § 240.)

In March 2022, the San Francisco Treasurer's Financial Justice Project, in partnership with the San Francisco Superior Court, Public Defender's Office, District Attorney's Office, and Bar Association, launched "Be the Jury." This first-of-its-kind pilot program in San Francisco increases the daily juror stipend from $15 per day to $100 per day for low- to moderate-income San Franciscans who are summoned to serve on juries but cannot serve because they would face a financial hardship. (The San Francisco Financial Justice Project, *Preliminary Findings from First Six Months of Pilot Program* (Nov. 2022) <https://sfgov.org/financialjustice/files/2022-11/Be%20the%20Jury%20Report_Final.pdf> [as of March 10, 2023].) The Be the Jury Pilot Program is funded through philanthropic funds raised by the San Francisco Financial Justice Project in the city's Treasurer's Office. (*Ibid.*)

"Through the pilot program, we want to learn if people who would have claimed a financial hardship would now be able to serve because of this program. We also want to learn if increased compensation for people with low incomes impacts the diversity of juries in a meaningful way." (*Preliminary Findings from First Six Months of Pilot Program*, *supra*, at p. 2) After six months of the pilot program, preliminary data shows:

- Program participants have a household income of just under $40,000, on average. 93% of participants have a household income below $75,000. As a point of comparison, the area median income in San Francisco for a single household is $97,000.

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[3] As of January 1, 2023, California's minimum wage is $15.50 per hour. (Department of Industrial Relations, *Minimum Wage* <https://www.dir.ca.gov/dlse/faq_minimumwage.htm> [as of March 10, 2023].)

- Program participants reflect the racial demographics of the broader San Francisco population. 63% of participants self-identified as people of color.

- 81% of participants reported that they could not have served without the $100 per day stipend. (*Ibid.*)

6) **Judicial Council Pilot Program on Juror Compensation**: Last year, the Legislature passed AB 1981 (Lee) Chapter 326, Statutes of 2022, which requires the Judicial Council to sponsor a pilot program for two fiscal years to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation. The Judicial Council must select at least six trial courts, in counties with regional and geographic diversity, including the County of Alameda, to participate in the pilot program. As part of the pilot program, the participating pilot courts are required to collect demographic information, as reported by jurors. AB 1981, also instructed the Judicial Council to publish a report describing the findings of the pilot program and providing information for promoting juror diversity The report is due to the Legislature no later than September 1, 2026. (Code Civ. Proc. § 241.)

7) **Argument in Support**: According to the *San Francisco Public Defender's Office*, "Every individual juror has the ability to put aside the all-too-common presumption of guilt, to actually presume innocence, and to follow the law in a criminal case. However, the fairness of trials and jury deliberations goes down exponentially when we do not make efforts to make sure that we enable a wider cross-section of individuals to participate in the process. Every defense attorney has had countless conversations with people we represent who are very wary of going to trial, even if they are not guilty of the charges, because they fear that a jury lacking economic and racial diversity will simply not fairly decide the case. The general public does not want people pleading to charges they are not guilty of because of a fear that the trial will not be fair. This is not justice. On the contrary, these plea deals often lead to incarceration, devastating families and historically criminalized communities. We must do better, and Be the Jury California is a critical step in ensuring fair and representative juries across this state.

"The Constitution promises the right to a jury of your peers, which is at the core of our justice system. Serving as a juror is the most meaningful opportunity for true civic engagement, and one of the only ways everyday people actively participate in our criminal legal system. Concerningly, stakeholders agree that juries are increasingly less diverse due to the steep financial hardship facing potential jurors.

"Currently, California only requires employers to provide time off for employees who are summoned to jury duty. Employers are not required to pay employees who serve on a jury. If a juror's employer does not cover their salary, jurors earn nothing on their first day of service and only $15 per day after that. Because many low-income families cannot afford to forfeit days, weeks, or months of their salary, many minimum wage or low-income workers who file a claim of financial hardship are excused from service. Due to racial income inequality, low jury pay excludes many Black and Latinx community members from ever serving as jurors resulting in the criminal legal system shutting out their relevant life experiences.

"Be The Jury CA takes inspiration from the highly successful juror pay pilot program in San Francisco. In San Francisco's pilot program, jury pay for criminal cases was increased to

$100 for low- to moderate-income San Franciscans. As a result, the diversity of program participants matched San Francisco's at large population where 63% of participants identified as "people of color;" the average household income for participants was under $40,000, significantly below the $97,000 area median household income in San Francisco; and 81% of participants said that they would not have been able to participate in jury duty without the financial assistance they received from the pilot program. [...]

"The achievements of the pilot program clearly demonstrate that raising juror pay to $100 for low to moderate income jurors, significantly increases the socio-economic and racial diversity of jurors. This bill ensures that our juries reflect the diversity of people who experience harm witnesses, and accused persons whose lives are impacted by jurors' decisions. California must take this needed step to ensure that our legal system serves all people."

8) **Related Legislation**: AB 78 (Ward), would increase the compensation for individuals selected to serve as grand jurors and requires demographic data to be collected during the grand jury selection process. AB 78 is pending in Assembly Appropriations Committee.

9) **Prior Legislation**:

   a) AB 1452 (Ting), Chapter 717, Statutes of 2021, authorized the Superior Court of San Francisco to conduct a pilot program to determine whether paying low-income trial jurors $100 per day in criminal cases promotes a more economically and racially diverse trial jury panel.

   b) AB 1972 (Ward), of the 2021-2022 Legislative Session, would have increased the compensation for individuals selected to serve as grand jurors. AB 1972 was held under submission in Senate Appropriations Committee.

   c) AB 1981 (Lee) Chapter 326, Statutes of 2022, increased mileage reimbursement for trial jurors and requires Judicial Council to sponsor a pilot program to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation.

   d) AB 2866 (Migden), Chapter 127, Statutes of 2000, increased the daily fees for jurors from $5 per day to $15 per day.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco District Attorney's Office (Co-Sponsor)
ACLU California Action
Asian Americans Advancing Justice-southern California
California District Attorneys Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Coalition on Homelessness, San Francisco
Communities United for Restorative Youth Justice (CURYJ)

Conference of California Bar Associations
Consumer Attorneys of California
Drug Policy Alliance
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Fair Chance Project
Glide
Homerise San Francisco
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Prosecutors Alliance California
Safe Return Project
San Francisco Financial Justice Project
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Sister Warriors Freedom Coalition
University of San Francisco School of Law | Racial Justice Clinic
Young Women's Freedom Center

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / 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 890 (Joe Patterson) – As Amended March 16, 2023

SUMMARY: 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. Requires the California Department of Public Health (CDPH) to approve, oversee, and develop statewide standards for the education program. Specifically, **this bill**:

1) Requires the trial court to order a defendant who is granted probation for specified drug offenses involving any amount of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof to successfully complete a fentanyl and synthetic opiate education program, if one is available.

2) Requires a court to refer defendants only to fentanyl and synthetic opiate education programs that have been approved by CDPH.

3) Requires CDPH to oversee the fentanyl and synthetic opiate education programs.

4) Requires CDPH to be responsible for all of the following:

   a) Collaborating with relevant stakeholders to set education provider standards;

   b) Approving, monitoring, and renewing approvals of program providers;

   c) Conducting periodic audits of probation departments and program providers to ensure compliance, as specified;

   d) Developing comprehensive, statewide standards through regulations, including, but not limited to, standards for program provider curricula and the training of program staff;

   e) Identifying and developing a comprehensive final assessment tool to assess whether a defendant has satisfactorily completed the requirements of the program; and,

   f) Analyzing the effectiveness of programs, including, but not limited to, thorough tracking of relevant participant and program data.

5) Requires the fentanyl and synthetic opiate education program to include education on the dangers of fentanyl and other synthetic opiates, including, but not limited to, information on all of the following:

a) How the use of fentanyl and synthetic opiates affects the body and brain;

b) The dangers of fentanyl and other synthetic opiates to a person's life and health;

c) Factors that contribute to physical dependence;

d) The physical and mental health risks associated with substance use disorders;

e) How to recognize and respond to the signs of a drug overdose, including information regarding access to, and the administration of, opiate antagonists and immunity for reporting a drug-related overdose, as specified; and,

f) The legality of drug testing equipment, as specified.

6) States that education may also include the criminal penalties for controlled substance offenses regarding fentanyl and other synthetic opiates.

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

8) Authorizes the court to allow a defendant to participate in a fentanyl and synthetic opiate education program via remote technology, if one is available.

9) Requires the probation department to report an unexcused absence by a defendant from a fentanyl and synthetic opiate education program to the court within two business days.

10) Requires a defendant who is absent from a session of the fentanyl and synthetic opiate education program to complete any and all components of the fentanyl and synthetic opiate education program that the defendant did not attend.

EXISTING LAW:

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

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

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

4) Requires a person convicted of a nonviolent drug possession offense to receive probation. (Pen. Code, § 1210.1(a).)

5) Provides that a person who possess fentanyl for sale or purchases fentanyl for sale shall be punished by imprisonment in county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

6) Provides that a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to do any of these acts, shall be punished by imprisonment in county jail for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)

7) Provides that a persons who transports fentanyl within this state from one county to another noncontinguous count shall be punished by imprisonment in county jail for three, six, or nine years. (Health & Saf. Code, § 11352, subd. (b).)

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

9) Requires the court to require, as a condition of probation, participation in and completion of an appropriate drug treatment program. (Pen. Code, § 1210.1, subd. (a).)

10) Authorizes the court, if it determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, to place a person convicted of a felony on probation if that person is not otherwise precluded by law from being placed on probation. (Pen. Code, § 1203, subd. (b)(3).)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "We must do more to educate those selling and trafficking fentanyl about the dangers it poses to their community. This bill will hold any person in possession of any amount of fentanyl, carfentanil, benzimidazole opiate that was granted probation accountable by requiring them to take an educational program on fentanyl and synthetic opiates. I hope that this will be a tool to enforce and educate the seriousness behind these drugs and crimes."

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

https://skylab.cdph.ca.gov/ODdash/?tab=Home> [last visited Mar. 7, 2023].).

3) **Probation for Drug Offenses:** Current law requires a trial court must order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

   Instead of requiring a person to secure education or treatment in a local community agency, under this bill a trial court would be required to order a person who is granted probation subsequent to a conviction for possessing fentanyl for personal use or for drug trafficking of fentanyl to attend a fentanyl and synthetic opiate education program, if one is available. Under this bill, the CDPH would oversee the fentanyl and synthetic opiate program, including, among other things, by collaborating with relevant stakeholders to set education provider standards, approving and renewing program providers, and developing standards for program curricula and the training of staff. The education program would have to, among others things, provide information on the dangers of fentanyl and other synthetic opiates, how to recognize and respond to the signs of a drug overdose, and the administration of opiate antagonists.

4) **Argument in Support**: According to the *Riverside Sheriff's Association*, "Fentanyl and its analogs have become a significant public health concern in California and across the United States. These synthetic opioids are highly potent and can be deadly even in small quantities. Fentanyl and its analogs are often mixed with other drugs, such as heroin and cocaine, leading to unintentional overdoses and deaths. In California, deaths involving fentanyl increased by 65% from 2019 to 2020, according to the California Department of Public Health.

   "To help combat this scourge, AB 890 addresses the fentanyl-related public health concerns by requiring probationers to complete a fentanyl and synthetic opiate education program. The bill aims to increase awareness and knowledge of the risks associated with these substances, and ultimately reduce the number of overdoses and deaths in California."

5) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "In an attempt to prevent fentanyl overdoses, AB 890 would require anyone convicted of a fentanyl-related offense to pay for and attend a drug class as a condition of probation. Aside from technical problems with the bill (e.g., see § 11356.6(d)'s arbitrary time limits and impractical paperwork requirements), AB 890's unfunded 'one size fits all' approach ignores the realities on the ground and will inevitably lead to the incarceration of indigent Californians who are unable to comply with its provisions.

   "The vast majority of defendants in California are indigent, and drug users are no exception. In its current iteration, AB 890 nonetheless proposes that these mentally disordered, barely functional, often homeless men and women be ordered to attend and pay for classes *even when* a court has determined that such a requirement is undesirable or impractical.

"Because our clients cannot afford to pay for classes and are already struggling to meet basic life requirements, they will either fail to complete these classes or fail to return to court, leading to their incarceration for 'violating' probation.

"Instead of such an unworkable mandate, we would propose the following:

- Authorize the creation of a fentanyl education program as described in proposed § 11356.6(b).
- Require local county jails to offer that program to incarcerated defendants and incentivize attendance by offering participating defendants an additional day of credit towards any sentence.
- Authorize a court to, in its discretion, order attendance at such a program as a condition of probation for a qualifying offense, provided the local County Board of Supervisors has approved funding for that program.
- Prohibit the court from ordering the defendant to pay for that program.
- Prohibit a jail sentence of more than one day for the defendant's failure to attend such a program."

6) **Related Legislation**:

a) AB 697 (Davies), would establish the Drug Court Success Incentives Pilot Program, which would authorize the Counties of Sacramento, San Diego, and Solano to offer up to $500 per month of supportive services to adult defendants who participate in the county's drug court to encourage participation in, and successful completion of, drug court. AB 697 will be heard today in this committee.

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

c) SB 46 (Roth), would require the county drug program administrator and representatives of the court and county probation department, with input from substance use treatment providers, to design and implement an approval and renewal process for controlled substance education or treatment. SB 46 is currently pending in the Senate Public Safety Committee.

7) **Prior Legislation**:

a) SB 904 (Bates), of the 2021-2022 Legislative Session, is substantially the same as SB 46 above. SB 904 was held in the Assembly Appropriations Committee in the Suspense File.

b) AB 1750 (Davies), of the 2021-2022 Legislative Session, would have required probation departments to design and implement approval and renewal processes for controlled substance education or treatment programs, and would require those programs to include education about the dangers of controlled substances. AB 1750 was held in the Assembly

Appropriations Committee on the Suspense File.

c) AB 1928 (McCarty), of the 2021-2022 Legislative Session, would have authorized the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders who have been convicted of drug-motivated felony crimes. AB 1928 was held in the Assembly Appropriations Committee on the Suspense File.

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Be the Solution (BTS) Commission
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys 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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association

Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

California Public Defenders Association (CPDA)
Ella Baker Center for Human Right

Analysis Prepared by: Andrew Ironside / 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 898 (Lackey) – As Amended March 13, 2023

SUMMARY: Requires probation departments to annually report to the Board of State and Community Corrections (BSCC) all injuries to juvenile hall staff and juvenile hall residents resulting from an interaction with staff and a resident. Specifically, **this bill**:

1) Requires annual reporting by juvenile probation departments on injuries to juvenile hall staff or residents resulting from an interaction between the two.

2) Require the following information be provided for each injury reported:

   a) The age of the resident or residents;

   b) The extent of injuries to staff and/or residents;

   c) Whether the department filed a report with the district attorney's office;

   d) Whether the district attorney filed criminal charges against the resident;

   e) The staffing ratio at the time of the incident;

   f) The location of the incident; and,

   g) Whether the incident took place in a secure youth treatment facility, as defined.

EXISTING LAW:

1) Authorizes the court to place a ward of the court in physical confinement, as specified. (Welf. & Inst. Code, § 726.)

2) 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).)

3) 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.)

4) 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).)

5) 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).)

6) Provides that when a battery is committed against a custodial officer and the perpetrator knows or reasonably should have known that the victim is a custodial officer in the performance of their duties, the offense is punishable as a felony. (Pen. Code, § 243.1.)

7) Requires a juvenile facility administrator to develop and implement written policies and procedures for the discipline of youth that shall promote acceptable behavior, including the use of positive behavior interventions and supports. Discipline shall be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment, physical or psychological degradation. (Cal. Code Regs., tit., § 1390.)

8) States that the juvenile facility administrator, in cooperation with the responsible physician, shall develop and implement written policies and procedures for the use of force, which may include chemical agents. Force shall never be applied as punishment, discipline or treatment. (Cal. Code Regs., tit., § 1357.)

9) Specifies that at a minimum, each facility shall develop policies and procedures which among other things:

   a) Restrict the use of force to that which is deemed reasonable and necessary to ensure the safety and security of youth, staff, others and the facility;

   b) Outline the force options available to staff including both physical and non-physical options and define when those force options are appropriate;

   c) Describe force options or techniques that are expressly prohibited by the facility;

   d) Describe the requirements of staff to report any inappropriate use of force, and to take affirmative action to immediately stop it;

   e) Define a standardized reporting format that includes time period and procedure for documenting and reporting the use of force, including reporting requirements of management and line staff and procedures for reviewing and tracking use of force incidents by supervisory and or management staff, which include procedures for debriefing a particular incident with staff and/or youth for the purposes of training as well as mitigating the effects of trauma that may have been experienced by staff and /or the youth involved;

   f) Include an administrative review and a system for investigating unreasonable use of force. (Cal. Code Regs., tit., § 1357, subd. (a)(1)-(6).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill 898 requires more detailed and stringent reporting regarding violent encounters in juvenile facilities across the state. There is a lack of accountability for violence perpetrated by staff and by youth residents in these facilities. By obtaining this information, we can work toward achieving that accountability.

   "The status quo is not acceptable. It is not acceptable for hard-working probation officers who are overwhelmed and overworked every day as they risk serious bodily injury during violent incidents at juvenile facilities. It not acceptable for youth residents who have been violently victimized by ill-intentioned staff. We must do more to understand and address the troubling experiences of both probation officers and youth residents, and we must make well-informed decisions about how to make these facilities safer and better for all parties."

2) **Reports of Violence in L.A. County Juvenile Halls**: In November 2022, the Los Angeles Times reported on increased violence in L.A. County juvenile halls:

   > In the first six months of 2022, the number of times officers used force on youths jumped by 50% compared to the first half of 2021, according to data provided by the probation department in response to a public records request. The number of times that youths were pepper sprayed quadrupled in the same time frame, records show.
   >
   > Attacks on officers and fights among youths have also increased dramatically. As of Oct. 9, the number of assaults on staff in the halls was already higher this year than the total alleged in all of 2021, according to probation department data. There had been 1,268 fights in the halls as of Oct. 9 this year, compared to 794 in all of 2021, a spike of 60%, records show.

   (*Inside Months of Chaos at L.A. County's Juvenile Halls*, J. Queally, Los Angeles Times, November 28, 2022, Inside months of chaos at L.A. County's juvenile halls - Los Angeles Times (latimes.com).)

   Accompanying this increase in violence, and contributing to it, are significant staffing shortages:

   > Of the roughly 1,200 jobs available in L.A. County's two juvenile halls, 40% are filled by "able-bodied" probation officers, people who can physically interact with kids, according to the department. Roughly 27% of juvenile hall employees, or 329 officers, are out on leave or on "light duty."
   >
   > Between 30 and 50 officers are calling out per shift, according to a letter Gonzales wrote to the L.A. County Board of Supervisors in September. The situation is so desperate that the department in October began offering increased base and overtime pay for any officer who simply shows up for work. (*Ibid.*)

It should be noted that some of this increased violence coincided with findings by the BSCC that two of the Los Angeles juvenile halls were "unsuitable" to house minors. When Central Juvenile Halls was scheduled to have a re-inspection by the BSCC, there was concern that they would fail the inspection, and so the hall was temporarily shut down without notice and all the residents were transferred to Barry J. Nidorf Juvenile Hall. When all the youth were placed into a single building, violence ensued resulting in injury to both staff and residents. (*Inside Months of Chaos at L.A. County's Juvenile Halls, supra.*)

While these reports of violence involve just L.A. County, staff shortages and violence can and do occur at any juvenile facility statewide, whether it be from fights among the residents or use of force by staff. For example, last fall Del Norte County's Chief Probation Officer was advocating closing down their juvenile detention facility because of the inability to meet staffing requirements. (https://wildrivers.lostcoastoutpost.com/2022/oct/11/del-norte-chief-probation-officer-recommends-closi/)

This bill would require probation departments statewide to annually report on injuries to juvenile facility staff and youth resulting from an interaction between staff and the youth, including extent of injuries, location of the incident, staffing ratios at the time of the incident, and whether the incident and injuries were reported to the district attorney's office.

3) **Discipline and Use of Force in Juvenile Halls**: Title 15 outlines the minimum standards applicable for juvenile facilities. Existing rules and regulations on discipline in juveniles halls provide that when separating youth for disciplinary reasons, discipline shall be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment, physical or psychological degradation. (Cal. Code Regs., tit., 15 § 1390.)

   Title 15 also instructs juvenile facility administrators to develop and implement written policies and procedures for the use of force. (Cal. Code Regs., tit., 15 § 1357.) Title 15 directs that force shall never be applied as punishment, discipline or treatment and that the use of force is restricted to that which is deemed reasonable and necessary to ensure the safety and security of youth, staff, others and the facility. (*Ibid.*) Use of force policies must include a description of which types of force are permissible and which are not, as well as requirements on how to report inappropriate use of force, and having a standardized reporting format. (*Ibid.*)

   Presumably, based on these use of force reporting requirements, some of the information which probation departments would be required to report under the provisions of this bill, at least as it pertains to injuries to the youth housed in the halls, is already being captured under the use of force reporting requirements.

4) **Argument in Support**: According to the *State Coalition of Probation Organizations*, the sponsor of this bill, "In 2020 the State enacted DJJ realignment placing the complete responsibility of the Juvenile Justice system on County Probation Departments. This year, the State will officially close all their juvenile detention facilities and local County juvenile halls, run by the Probation Department, will be responsible for the housing of all adults up to the age of 25, who are under juvenile jurisdiction, in our detention facilities. This new population

of adults are more sophisticated, violent, and physically mature which poses a greater threat to sworn probation employees in the juvenile halls.

"As operations and responsibilities shift from the Department of Juvenile Justice to county-operated juvenile halls and secured youth treatment facilities, counties – most notably LA County – have struggled to keep up with standards set by the Board of State and Community Corrections (BSCC), to the detriment of staff and youth residents.

"County facilities are facing unsustainable staff shortages across the state. In November of 2022, only 40% of LA County juvenile hall positions were filled and between 30 and 50 probation officers were calling out per shift, leading to frequent mayhem and violence within these facilities.

"Facility lockdowns have been frequent both as a result of violent incidents and staff shortages, leading to an increased adversarial and confrontational dynamic between staff and residents. In LA County, the number of assaults on juvenile hall staff in 2022 rose more than 60% compared to the previous year. Similarly, the number of times officers used force on youth residents spiked 50% in the first half of the year relative to the same period in 2021, and the number of times officers used pepper spray during these encounters quadrupled.

"It is imperative that from the start, the State collects data regarding assaults and injuries to staff and wards after the introduction of this new population. This data can then be used by lawmakers to help guide future decisions and legislation regarding the housing and rehabilitation of this new population."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 898 would waste taxpayers' precious time and money by requiring county probation departments to gather and report this data--to no end. It requires reporting of this information annually to the BSCC, but the BSCC has no authority to take any action with respect to this information. In fact, the BSCC is charged with enforcing the regulations that provide for the safety of the youth in these facilities. While individual counties may want to gather this information to inform best practices, there is nothing to stop them from doing so, and no need to impose the requirement that such information gathering be mandated and provided to the state.

"Additionally problematic is the vague nature of the information sought. What is an 'interaction' with a resident? 'What counts as an injury?' Is there any requirement that the injury be caused by a youth? If a youth creates a disturbance that is responded to by several officers, and an officer accidentally elbows another officer, does that get reported? If one officer pepper sprays a group of youth and an officer is exposed, will that be reported? These are just a few of the many scenarios that illustrate the serious problems with the data sought to be collected in this bill.

"All of that aside, as public defenders we are familiar with the myriad dangers and problems with juvenile facilities. Particularly troubling is the situation in Los Angeles County, where youth are at risk due to the lack of adequate mental health treatment and appropriate supervision and training of staff resulting in serious injuries to both youth and staff, abuse of youth by staff and drug overdoses by youth.

"Local probation departments are already capable of, and better poised, to collect the data they need and use it to inform actions needed to safeguard their officers. AB 848 accomplishes nothing towards that end."

6) **Related Legislation**:

a) AB 695 (Pacheco), would establish the Juvenile Detention Facilities Improvement Grant Program to address the inadequate and dilapidated state of county juvenile detention facilities. AB 695 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 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, redefined the exception to room confinement in juvenile facilities for brief periods to a brief period lasting no more than two hours when necessary for institutional operations.

b) AB 2010 (Chau) of the 2017-2018 Legislative Session, would have prohibited an officer or employee of a juvenile facility, as defined, from possessing and using any chemical agent, such as pepper spray, in a juvenile facility, with limited exceptions, as of January 1, 2021. The hearing on AB 2010 in this committee was cancelled at the request of the author.

c) SB 1143 (Leno), Chapter 726, Statutes of 2016, limited the use of room confinement in juvenile facilities, and banned its use for the purposes of punishment, coercion, convenience, or retaliation.

REGISTERED SUPPORT / OPPOSITION:

Support

State Coalition of Probation Organizations (Sponsor)
Deputy Sheriffs' Association of Monterey County
Placer County Deputy Sheriffs' Association
Riverside Sheriffs' Association

Opposition

California Public Defenders Association

Analysis Prepared by: Sandy Uribe / 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 912 (Jones-Sawyer) – As Amended March 14, 2023

As Proposed to be Amended in Committee

SUMMARY: Reinvests cost savings from Department of Corrections and Rehabilitation (CDCR) prison closures by funding early violence intervention programs, school-based physical and mental health services, and youth recreational activities. Specifically, **this bill**:

1) States that these provisions may be cited to as the Strategic Anti-Violence Funding Efforts (SAFE) Act.

2) Provides that the State Department of Public Health (DPH) must, on or before January 1, 2025, make available planning grants in specified amounts to be used for costs associated with assessing the need for a school health center in a particular community or area and developing partnerships for its operation.

3) States that, on or before January 1, 2025, DPH must make available facilities and startup grants in specified amounts for the purpose of establishing a school health center, as specified.

4) States that, on or before January 1, 2025, DPH must make sustainability grants available in specified amounts for the purpose of operating a school health center, or enhancing programming at a preexisting school health center, among other things, and give preference to non-law enforcement entities.

5) States that when awarding the school health center grants, preference shall be given to non-law enforcement entities.

6) Creates the Department of Justice (DOJ) Violence Reduction Grant Program (VGRP) which requires the DOJ to oversee a grant program to support, expand, and replicate evidence-based, deterrence-focused, collaborative programs that conduct outreach to individuals involved in gangs and offer supportive services as a preemptive measure to curb gang violence.

7) States that the grants must be made on a competitive basis with preference to jurisdictions disproportionately impacted by violence and gangs, and community-based organizations (CBOs) that serve such jurisdictions.

8) States that applicants seeking funding from the VRGP must submit proposals that include, but are not limited to:

    a) Defined and measurable objectives;

b) A description of which evidence-based, deterrence-focused violence reduction program will be administered;

c) A description of how coordination of existing violence intervention and prevention programs will be enhanced; and,

d) Evidence that supports the proposed violence reduction program's efficacy in reducing homicides, shootings, aggravated assaults, and gang involvement.

9) Provides that, when awarding VRGP grants, the DOJ must give preference to applicants whose proposals demonstrate the greatest likelihood of reducing violence and gang involvement without contributing to mass incarceration.

10) Requires each city or local jurisdiction receiving VRGP funds to distribute no less than half of the monies to CBOs or government agencies primarily dedicated to community safety or violence prevention.

11) States that the DOJ must form a grant selection advisory committee that includes victims of violence, formerly incarcerated persons, and persons with direct experience implementing evidence based violence and gang reduction programs.

12) Requires grantees of the VRGP to report to the DOJ progress reports.

13) Requires the DOJ to submit at the close of each grant cycle, a report to the Legislature regarding the impact of the violence prevention programs funded by the VRGP.

14) Requires the Department of Parks and Recreation (DPR) to award grants to local governments and with preference to CBOs to support existing and create new parks and recreation opportunities, as well as summer programs for youth.

15) States that DPR, when developing the program, must establish criteria and accountability measures as needed, and must ensure priority is given to underserved populations and CBOs, as specified.

16) Mandates that DPR give priority to outdoor recreational and health-based intervention programs that operate during peak times of violence.

17) Provides that DPR may consider any of the following when considering recreational and health-based intervention programs:

a) The efficiency in serving the maximum number of participants;

b) Demonstrated partnership with public, private and nonprofit entities;

c) Contribution to healthy lifestyles, violence prevention and gang deterrence, and improved outdoor recreational experiences; and,

d) Service learning and community outreach components.

18) Requires DPR to collect information from grantees for evaluation purposes, summarize such information, and report to the appropriate policy, budget and fiscal committees of the Legislature. The report must include total number of youth served, number and types of entities funded, improvement recommendations, and other specified information.

19) Reestablishes the Youth Reinvestment Grant Program (YRGP) and designates the Office of Youth and Community Restoration (OYCR) to administer it.

20) Creates the Youth Reinvestment Fund and allocates monies into it, as specified.

21) Defines, among other terms, "youth" as a person subject to the jurisdiction of the juvenile court.

22) Requires that OYCR allocate YRGP funds to implement a mixed-delivery system of trauma informed health and development diversion programs for Native American youth.

23) Outlines eligibility criteria to receive YRGP funding, as specified.

24) Requires that OYCR allocate YRGP funds, as specified, to programs offering mixed-delivery systems of trauma-informed health and development diversion programs for youth, and specifies, among other things, that the entities must be not be governmental or law enforcement, or probation entities.

25) States that YRGP funds must be awarded to applicants with an official letter from at least one government agency demonstrating the agency's intent to refer youth enrolled in a diversion program to the applicant.

26) States that OYCR must distribute YRGP funds as follows:

    a) Be provided in communities with high arrest rates or with high racial or ethnic disparities in youth arrest rates;

    b) Be evidence based or research supported, trauma informed, culturally relevant, gender responsive, and developmentally appropriate;

    c) To applicants with prior experience serving at-risk youth; and,

    d) Give priority to organizations employing people who were youths with experience in the juvenile justice system.

27) States that youth diversion programs under the YRGP must include alternatives to arrest and the justice system, with preference given to programs diverting youth as early as possible.

28) States that YRGP funded diversion programs must include one or more of the following: educational services, mentoring services, mental health services, and other specified services.

29) States that the OYCR is responsible for the administration, oversight, and compliance of the YRGP and specifies the duties included.

30) Creates the Cognitive Behavioral Intervention for Trauma Pilot Program (pilot program) for a period of five years.

31) Designates the Health and Human Services Agency (HHSA) for the purpose of implementing the Cognitive Behavioral Intervention for Trauma in Schools (CBITS) program and to select an organization to study specified student outcomes.

32) Establishes the pilot program in the counties of Alameda, Fresno, Merced, Tulare, Kern, and Los Angeles.

33) Requires that HHSA award grants to schools that meet the following criteria:

   a) The school uses the monies for implementing the CBITS program;

   b) The school is located in a region significantly impacted by gun violence as indicated by violent crime data, among other things;

   c) The school present substantial plans for the collection and distribution of information to the appointed research organization and for fidelity monitoring; and,

   d) Any criteria specified by HHSA.

34) Requires HHSA, when considering research grant applications, give preference to organizations with demonstrated track records of studying youth, CBOs and nonprofits, working with schools to create trauma-sensitive environments, and other specified criteria.

35) Requires the agency to submit a report to the legislature detailing outcomes, including academic performance and rates of criminal offenses, among other things.

EXISTING LAW:

1) Establishes the Youth Reinvestment Grant Program within the Board of State and Community Corrections (BSCC) for the purpose of granting funds, as specified. (Welf. & Inst. Code, § 1450.)

2) Requires that a specified percentage of funds be allocated for the purpose of implementing diversion programs for Indian children that use trauma-informed, community-based, and health-based interventions. (Welf. & Inst. Code, § 1453, subd. (a).)

3) States that priority must be given to diversion programs addressing the needs of Indian children who experience high rates of juvenile arrest, suicide, and alcohol abuse, among other things. (Welf. & Inst. Code, § 1453, subd. (b).)

4) Requires that a specified percentage of funds be allocated for the purpose of implementing diversion programs for children throughout local jurisdictions that are trauma-informed, evidence-based, and culturally relevant, among other things. (Welf. & Inst. Code, § 1454 subds. (a) & (b).)

5) States that jurisdictions with the highest need must be provide a certain minimum of funds and defines "highest needs" as areas with high juvenile arrest rates and high levels of racial or ethnic disparity in juveniles arrest rates. (Welf. & Inst. Code, §1454, subd. (b).)

6) Provides that the BSCC is responsible for oversight and accountability of the program and that it must track funding, provide guidance to programs, and contract with a research firm to conduct a statewide evaluation of the grant, as specified. (Welf. & Inst. Code, § 1455.)

7) States that the YRGP funds must be allocated by the BSCC through a competitive grant process, as specified. (Welf. & Inst. Code, § 1458.)

8) 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).)

9) Provides that 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. (Welf. & Inst. Code, § 2200, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "By advancing sensible legislation and budget items to improve public safety and advance justice and equity, the State Legislature has decreased the number of incarcerated people in California. It is imperative that the resulting savings be reinvested into effective strategies proven to further reduce crime and violence. AB 912, the SAFE Act, will capture the savings from the closure of two prisons in the 2023-24 state budget and reinvest those funds in programs with proven success. By keeping the funding within our crime prevention budget rather than sending it back to the General Fund, we send a message that our efforts to reduce crime are continuous and we provide much needed resources for some outstanding programs. As such, the SAFE Act, specifically, will provide ongoing funding for the Youth Reinvestment Grant Program; reduce gang violence and gang involvement through programs modeled after successful ones, such as Oakland Ceasefire; expand the Cognitive Behavioral Intervention for Trauma in Schools (CBITS) program; increase access to physical and mental health services for K-12 students through school-based health centers; and, support parks and recreation opportunities, including summer youth leagues and extended programming."

2) **Violence as a Public Health Issue**: In recent decades, the approach to curbing violence primarily through law enforcement methods has shifted, and violence is now being recognized as a public health problem.[1] One of the proffered reasons for the transition is that, as the health care system achieved advancements in preventing and treating infectious diseases, homicide and suicide rose in the cause-of-death rankings.[2] Since 1965, homicide

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[1] Dahlberg and Mercy. *History of Violence as a Public Health Problem*. American Medical Association (AMA) Journal of Ethics. (2009) <https://journalofethics.ama-assn.org/article/history-violence-public-health-problem/2009-02> [as of Oct. 17, 0222].
[2] *Id.*

and suicide have consistently been one of the top 15 leading causes of death in the US.[3] For some groups, homicide has had an even greater impact. According to the Centers for Disease Control and Prevention (CDC), homicide has been the leading cause of death for black youth during the past three decades.[4] Another reason for the transition was the successful outcomes achieved by modifying behavioral factors for diseases such as stroke, cancer, and heart disease, which encouraged health professionals to believe the same epidemiological approach could be applied for behavioral challenges underlying violent behavior.[5] Lastly, the emergence of child maltreatment and intimate partner violence as recognized social problems in the 1960s and 1970s further demonstrated the need to move beyond relying on the criminal-justice sector for finding solutions for the problem of violence in general.[6]

Furthermore, it has been posited that the symptoms and behavior of violence mirrors those of a contagious and epidemic disease.[7] Such symptoms include morbidity and mortality, person to person transmission—youth with chronic exposure to violence have been found to be 3,150% (or 31.5 times) more likely to engage in chronic violent behavior, and incubation periods—for example, the period between being subjected to child abuse and becoming a perpetrator of violence may be years or decades.[8]

In the 1990s, the CDC began implementing and studying violence intervention programs influenced by a public health approach.[9] These studies demonstrated that significant reductions in violent behavior were possible through applied, skill-based violence prevention programs.[10] Since then many violence prevention programs have been used here in California, most notably programs such as Operation Ceasefire, Advance Peace, and Trauma Recovery Centers have been implemented with seemingly positive results. These programs operate based off of the well documented fact that violent crimes are highly concentrated in certain locations and among a small number of offenders.[11] In Oakland, crime data suggested

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[3] *Id.*
[4] CDC. *A Comprehensive Technical Package for the Prevention of Youth Violence and Associated Risk Behaviors.* <https://www.cdc.gov/violenceprevention/youthviolence/fastfact.html> at 8. [as of Oct. 17, 2022].
[5] Dahlberg and Mercy. *History of Violence as a Public Health Problem.*
[6] *Id.*
[7] Slutkin, MD. *How the Health Sector Can Reduce Violence by Treating It as a Contagion.* AMA Journal of Ethics. (2018) <https://journalofethics.ama-assn.org/article/how-health-sector-can-reduce-violence-treating-it-contagion/2018-01> [as of Oct. 17, 2022].
[8] Slutkin, MD. *How the Health Sector Can Reduce Violence by Treating It as a Contagion.* AMA Journal of Ethics. (2018) <https://journalofethics.ama-assn.org/article/how-health-sector-can-reduce-violence-treating-it-contagion/2018-01> [as of Oct. 17, 2022]; Spano R, Rivera C, Bolland JM. *Are chronic exposure to violence and chronic violent behavior closely related developmental processes during adolescence?* Crim Justice Behav. (2010) <https://journals.sagepub.com/doi/10.1177/0093854810377164>; Ehrensaft MK, Cohen P, Brown J, Smailes E, Chen H, Johnson JG. *Intergenerational transmission of partner violence: a 20-year prospective study.* J Consult Clin Psychol. (2003) <https://psycnet.apa.org/doiLanding?doi=10.1037%2F0022-006X.71.4.741>; Huesmann LR, Moise-Titus J, Podolski CL, Eron LD. *Longitudinal relations between children's exposure to TV violence and their aggressive and violent behavior in young adulthood: 1977-1992.* Dev Psychol. (2003) <https://psycnet.apa.org/doiLanding?doi=10.1037%2F0012-1649.39.2.201>.
[9] Dahlberg and Mercy. *History of Violence as a Public Health Problem.* American Medical Association (AMA) Journal of Ethics. (2009) <https://journalofethics.ama-assn.org/article/history-violence-public-health-problem/2009-02> [as of Oct. 17, 0222].
[10] *Id.*
[11] Hannah McManus. *Street Violence Crime Reduction Strategies: A Review of the Evidence.* (Feb. 2020) <https://www.theiacp.org/sites/default/files/Research%20Center/Violence%20Reduction%20Literature%20Review_FINAL.pdf> at vii [as of Sep. 27, 2022].);

that less than one half of one percent of the city's population generated the majority of gun violence, and that these "at-risk" individuals tended to be involved in gang and other criminally-active groups.[12]

This bill would create a series of grant programs that take a public health approach method and seek to apply it to reduce violence instead of using a traditional law enforcement approach, which does not generally address the underlying causes that drive violence.

For example, there have been some notable and successful violence prevention programs with the same goals as the VGRP proposed in this bill. Oakland Ceasefire and Advance Peace reach out to individuals who are "at-risk."

Operation Ceasefire's primary design is to reduce violent crimes by bringing together a partnership of criminal justice and community organizations to communicate to "high risk" individuals that there are tailored services and support available to help them step away from violence, and that failure to do so will result in precision law enforcement attention for those continuing to commit violent acts.[13] In 2012, Oakland entered into a contract with the California Partnership for Safe Communities to help design and implement a new Ceasefire effort.[14] From 2012 to 2017, Oakland has experienced a 43% reduction in homicides and a 50% reduction in non-fatal shootings." [15]

Similar to Operation Ceasefire, the Advance Peace program seeks to reduce urban violence by reaching out to individuals at high risk of committing a shooting or homicide.[16] Advance Peace programs engage at-risk individuals by using formerly incarcerated street outreach workers to provide consistent mentoring and mediation when conflicts arise.[17] A study of the program in Stockton found that the, "annual average of gun homicides and assaults also declined during the AP Stockton program period compared to the annual averages from 2015 through 2018. Specifically, we found that the 12-month average for gun homicides and assaults declined by 21% citywide…"[18] There is also an evaluation from an Advance Peace in Sacramento which stated that the mean number of gun homicides and assaults decreased by 21.4% over a four-and-a-half-year period of intervention.[19]

This bill would allow for funding of evidence-based interventions such as Operation Ceasefire and Advance Peace, while allowing flexibility for other programs to receive funding as well.

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[12] Braga et al. *Oakland Ceasefire Evaluation: Final Report to the City of Oakland.* (May 2019) <https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-Evaluation-Final-Report-May-2019.pdf> at p. 9. [as of Oct. 17, 2022].)
[13] *Id.* 13, 15.
[14] *Id.* at 14.
[15] *Id.* 14-15, 101.
[16] Corburn et al. *Advance Peace Stockton 2018-2020 Evaluation.* (Jan. 2021). <https://stockton.advancepeace.org/about/learning-evaluation-impact/> at 4. [as of Oct. 21, 2022].
[17] *Ibid.*
[18] *Id.* at 8.
[19] Corburn et al. *Outcome Evaluation of Advance Peace Sacramento, 2018-19.* Berkeley Institute of Urban and Regional Development. (2020) <http://healthycities.berkeley.edu/advance-peace.html> at 5. [as of Oct. 18, 2022].

3) **Recreational Activities Options during Peak Hours of Violence**: This bill would also provide funding for recreational activities youth can engage in. The idea being that youth having an option to go to a safe environment would limit the opportunity time-wise for them to be engaged in less productive behavior. One example of this is the Summer Night Lights program in Los Angeles. Starting in 2008, it aimed to provide a safe environment for youth in communities impacted by gang violence. They did so by providing free meals, extended programming and sports leagues, as well as safe spaces for recreation, community engagement, and linkages to local resources. (<https://www.lagryd.org/summer-night-lights.html>)

4) **YRGP**: The YRGP was established in the 2018 Budget Act and a related trailer bill. The YRGP is aimed at diverting low-level offenders from initial contact with the juvenile justice system using approaches that are evidence-based, culturally relevant, trauma-informed, and developmentally appropriate. Currently, only California cities and counties are eligible to apply for grants. Current law requires the applicant to designate a "lead public agency"—which may be the applicant city or county, or a department or agency within the applicant's jurisdiction—to receive 10% the funds and to coordinate with local law enforcement agencies, social service agencies, and nonprofit organizations to implement the local grant program. Applicants are required to pass through the remaining 90% of awarded funds to community-based organizations to deliver diversion programs to minors.[20]

   According to the Legislative Analyst's Office, 30 local jurisdictions have received funding through the YRG program from the Board of State and Community Corrections (BSCC).[21] Examples of funded programs include a range of after-school and mentoring programs in Culver City and a program in Alameda County that provides services to at-risk or justice-involved youth (such as a late-night sports league, case management, and mentorship).[22]

   All juvenile justice grant administration functions in the Board of State and Community Corrections are required to be moved to the OYCR no later than January 1, 2025. (Welf. & Inst. Code, § 2200, subd. (f).) Moreover, in light of the public health approach to criminality, arguably the OYCR a branch of the Health and Human Services Agency, is better suited to administer the program.

   This bill would reinstate the YRGP and designate its administration to the OYCR. In addition, it would provide enhanced guidelines for distribution of the YRGP funds to ensure organizations receiving funds had prior experience and communities with the highest need received greater priority, among other things.

5) **Cognitive Behavioral Intervention for Trauma in Schools (CBITS)**: A core aspect of such programs as Operation Ceasefire or a TRC, is engaging with "at-risk" individuals to provide

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[20]BSCC, *Youth Reinvestment Grant Frequently Asked Questions* <http://www.bscc.ca.gov/wp-content/uploads/YRG-FAQ-POSTED-3.5.19.pdf> [as of Jul. 3, 2019].
[21] Legislative Analyst's Office. *Youth Reinvestment, Second Chance Act, and Trauma Recovery Center Grant Programs*. (2019) <https://lao.ca.gov/Publications/Detail/4082> [as of Oct. 21, 2022].
[22] *Ibid.*

access to social services, mentoring, and helping them manage emotional responses.[23] However, given that victims and perpetrators of violent crimes are populations that often overlap, further violence intervention efforts should address factors to violent victimization and criminal involvement simultaneously.[24] Considering the fact that traumatic experiences during adolescence is associated with subsequent criminality, even when controlling for race, gender, and economic status; a look into addressing trauma for adolescents in schools is merited.[25]

In 1998, the Los Angeles Unified School District (LAUSD), teamed up with UCLA and the Research and Development Corporation (RAND), to determine the extent of violence exposure and post-traumatic stress symptoms among LAUSD students and to implement a program designed to address such issues. Of the eligible participants, two randomly assigned groups were created. One group started the program immediately and the other received treatment later on in the year. RAND and mental health clinicians from LAUSD developed the CBITS intervention program. The CBITS program consisted of, among other things, individual sessions with clinicians, activities training such as relaxation methods, ways of dealing with negative thoughts, and coping with violent events through talking, drawing or writing.

Within three months, the students receiving CBITS intervention showed a greater substantial decrease in their Post-Traumatic Stress and Depressive symptoms than the students who had not yet received any intervention. After the three month period, the study stopped treating the group which had previously been helped, and began the CBITS program for the second group. After another three month period, the results were that the group that had received CBITS after the waiting period also showed substantial improvement, while the group that had initially received CBITS maintained their improvements. The data in figures 1 and 2 provide an overview of this information.

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[23] City of Oakland Human Services Department. *CalGRIP Final Local Evaluation Report.* (Mar. 30, 2018) <https://www.bscc.ca.gov/wp-content/uploads/Oakland-CalGRIP-Final-Evaluation-Report.pdf> at 5 [as of Oct. 17, 2022]; Corburn et al. *Advance Peace Stockton 2018-2020 Evaluation.* (Jan. 2021) at 4.

[24] Hannah McManus. *Street Violence Crime Reduction Strategies: A Review of the Evidence.* (Feb. 2020) <https://www.theiacp.org/sites/default/files/Research%20Center/Violence%20Reduction%20Literature%20Review_FINAL.pdf> at 44-45 fn. 19 [as of Sep. 27, 2022].)

[25] *Victimization and Juvenile Offending.* National Child Traumatic Stress Network. (2016) <https://www.nctsn.org/sites/default/files/resources//victimization_juvenile_offending.pdf> at 4 [as of Sep. 27, 2022]) see also: Phelan Wyrick. *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System.* National Institute of Justice funded. (Oct. 2021) <https://www.ojp.gov/pdffiles1/nij/255645.pdf> [as of Sep. 27, 2022].)

Figure 1
Post-Traumatic Stress Symptoms at Baseline, Three Months, and Six Months

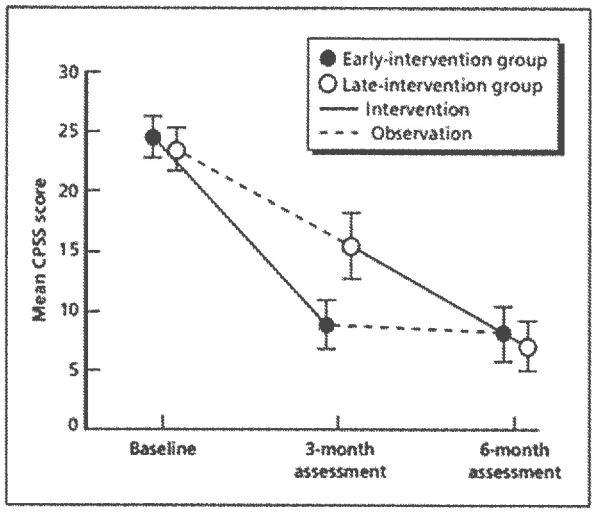
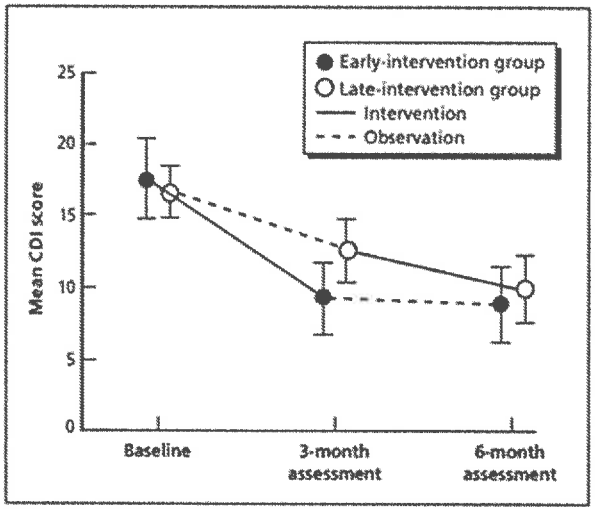


Figure 2
Depressive Symptoms at Baseline, Three Months, and Six Months



SOURCE: Stein BD, Jaycox LH, Kataoka SH, Wong M, Tu W, Elliott MN, and Fink A, "A Mental Health Intervention for School Children Exposed to Violence," *Journal of the American Medical Association*, Vol. 290, No. 6, August 6, 2003, pp. 603–611. Copyright © 2003, American Medical Association. All rights reserved.

NOTE: CDI = Children's Depression Inventory, an assessment tool and scale for measuring child depression.

Since its inception at LAUSD, CBITS has been implemented broadly within the US and is, "included in the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs (NREPP) and received high scores from NREPP on quality of research and readiness for dissemination."[26] With such a program in place that does seek to modify behavior by dealing with underlying trauma, and in light of the public health data mentioned above, there should be a greater focus on expanding and evaluating CBITS programs as well as others like it in communities wherein individuals at-risk of committing gun violence live and presumably attend school.

This bill would create a five-year CBITS pilot program in five counties and would require a study be done to evaluate student outcomes in areas such as academic performance, trauma-related behavioral symptoms, and criminality rates.

Considering the fact that traumatic experiences during adolescence is associated with subsequent criminality, even when controlling for race, gender, and economic status; an epidemiological look into addressing trauma for adolescents seems to be merited.[27] This bill would provide a comprehensive public health oriented approach to violence in our communities.

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[26] *Cognitive-Behavorial Intervention for Trauma in Schools (CBITS)* RAND Corporation. https://www.rand.org/well-being/social-and-behavioral-policy/projects/cbits.html

[27] *Victimization and Juvenile Offending*. National Child Traumatic Stress Network. (2016) <https://www.nctsn.org/sites/default/files/resources//victimization_juvenile_offending.pdf> at 4 [as of Sep. 27, 2022]) see also: Phelan Wyrick. *Examining the Relationship Between Childhood Trauma and Involvement in the Justice System*. National Institute of Justice funded. (Oct. 2021) <https://www.ojp.gov/pdffiles1/nij/255645.pdf> [as of Sep. 27, 2022].)

6) **Argument in Support**: According to *Indivisible CA: StateStrong*, "On December 6, 2022, the California Department of Corrections and Rehabilitation announced the closure and exiting of contract for two additional prison facilities. With the closure of these facilities, the Legislative Analyst's Office estimates a cost savings of $235.3 million annually. Rather than returning to the General Fund, it is imperative these savings are kept within the Legislature's crime prevention budget and reinvested into effective strategies proven to further reduce crime and violence.

"Studies have shown health-based approaches have been successful in curbing violence through applied, skill-based prevention programs. Addressing youth mental health and adverse childhood experiences (ACEs) is crucial in mitigating long-term effects, such as substance abuse, mental illness, chronic health problems, and criminality. Existing programs have been successful in providing crucial resources and early intervention to youth.

"The SAFE Act calls for the reallocation of the $235 million in annual savings from the proposed closure of two prisons in the 2023-24 state budget. Those funds will go to the following programs:

1) $50 million annually to relocate the Youth Reinvestment Grant Program from the Board of State and Community Corrections to the Office of Youth and Community Restoration. Grants are available for local jurisdictions and California tribes for trauma-informed diversion programs for minors.

2) $35 million annually to the Department of Justice for the purpose of programs that reduce gang violence and gang involvement, modeled after successful programs like Ceasefire in Oakland that resulted in a 43% reduction in homicides and a 50% reduction in non-fatal shootings.

3) $50 million annually to the State Department of Public Health, in consultation with the State Department of Education, to provide operational grants to School-based Health Centers and provide health and mental health services to children on school sites.

4) $50 million annually to the California Health and Human Services Agency to support a pilot program for Cognitive Behavioral Intervention for Trauma in Schools (CBITS) in Alameda, Fresno, Merced, Tulane, Kern and Los Angeles. This program supports early trauma-informed interventions for school-aged children experiencing extreme traumatic events in support of their health, well-being and community stability.

5) $50 million annually to the Department of Parks and Recreation in support of grants to local governments and community-based organizations to create new parks and fund recreation and health-based opportunities during peak times of violence."

7) **Related Legislation**:

a) AB 1056 (Davies), would require the Department of Parks and Recreation to make funding available to nonprofit organizations and city or county parks and recreation departments to provide free swimming lessons for low-income and at-risk youth. AB 1056 is pending hearing in the Assembly Water, Parks, and Wildlife Committee.

b) AB 762 (Wicks), would repeal the sunset date for the California Violence Intervention and Prevention Program. AB 762 is currently pending hearing in the Assembly Public Safety Committee.

c) SB 266 (Newman), would create the Public Safety Collaborative Fund in the State Treasury. SB 266would require the board, upon appropriation by the Legislature, to administer public safety collaborative grants from the fund to regional public safety collaboratives established for violence prevention, intervention, and suppression activities. SB 266 is pending hearing in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 1454 (Jones-Sawyer) Chapter 584, Statutes of 2019, authorized additional grants to within the YRGP to administer diversion programs, as specified.

b) AB 1812 (Jones-Sawyer) Chapter 36, Statutes of 2018, established the YRGP within the BSCC and appropriated funds for purposes of trauma-informed programs for minors, as specified.

c) SB 191 (Beall) of the 2015-2016 Legislative Session, would have authorized a county, or a qualified provider operating as part of the county mental health plan network, and a local educational agency to enter into a partnership to create a program that includes, among other things, targeted interventions for pupils with identified social-emotional, behavioral, and academic needs. SB 191 was held in the Senate Appropriations Committee.

d) AB 1018 (Cooper) of the 2015-2016 Legislative Session, would have required DHCS and CDE to convene a joint taskforce to examine the delivery of mental health services to children. AB 1018 was held in the Senate Appropriations Committee.

e) AB 1644 (Bonta) of the 2015-2016 Legislative Session, would have required the Department of Public Health (DPH) to establish a four-year program to support local decisions to provide funding for early mental health support services, required DPH to provide technical assistance to local educational agencies, and required DPH to select and support school sites to participate in the program. AB 1644 was held in the Senate Appropriations Committee.

f) AB 1025 (Thurmond) of the 2015-2016 Legislative Session, would have required CDE to establish a three-year pilot program in school districts to encourage inclusive practices that integrate mental health, special education, and school climate interventions following

a multi-tiered framework. AB 1025 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Children Now
Community Agency for Resources, Advocacy and Services
Community Works
Defy Ventures
Drug Policy Alliance
Faith in The Valley
Freedom 4 Youth
Freedom Within Project
Friends Committee on Legislation of California
Indivisible CA Statestrong
Insight Prison Project, a Division of Five Keys Schools and Programs
John Burton Advocates for Youth
Kalw Public Media
LA Defensa
March for Our Lives Action Fund
Milpa (motivating Individual Leadership for Public Advancement)
National Center for Youth Law
Pacific Juvenile Defender Center
Prosecutors Alliance California
Reevolution
Sacred Purpose LLC
Santa Cruz Barrios Unidos INC.
Success Stories Program
The Transformative In-prison Workgroup
Theatreworkers Project
Women's Foundation of California, Dr. Beatriz Maria Solis Policy Institute (SPI)
Young Women's Freedom Center
Youth Forward

Opposition
None.

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

Amended Mock-up for 2023-2024 AB-912 (Jones-Sawyer (A))

Mock-up based on Version Number 98 - Amended Assembly 3/14/23
Submitted by: Natalia Garcia, Office of Assemblymember Jones-Sawyer

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

SECTION 1. This act shall be known, and may be cited, as the Strategic Anti-Violence Funding Efforts Act, or SAFE Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The Legislative Analyst's Office (LAO) estimates that savings associated with the closure of prisons and Department of Juvenile Justice (DJJ) facilities, as well as a declining population of incarcerated persons, will total $1.5 billion annually by 2025.

(b) On December 6, 2022, the California Department of Corrections and Rehabilitation (CDCR) announced the closure of Chuckwalla Valley State Prison (CVSP) and exiting of California City Correctional Facility (Cal City). CVSP will close by March 2025. CDCR will terminate the Cal City contract in March 2024 and end the use of that facility as a state prison.

(c) The LAO estimates that savings associated with the closure of CVSP amounts to $100 million in ongoing funds, and the exiting of Cal City amounts to $135.3 million. Therefore, the closure of CVSP and exiting of Cal City amounts to a cost savings of $235.3 million annually.

(d) It is the intent of the Legislature to reinvest the CDCR cost savings from prison closures and declining incarcerated persons' populations to do all of the following:

(1) Expand the Cognitive Behavioral Intervention for Trauma in Schools (CBITS) program.

(2) Provide ongoing funding for the Youth Reinvestment Grant Fund.

(3) Create a fund to support existing and create new parks and recreation opportunities, as well as summer programs for youth.

(4) Provide operational grants to school-based health centers in order to provide physical health and mental health services to youth on school sites.

(5) Create a fund to support early intervention programs to reduce violence by mentoring "at-promise" individuals.

SEC. 3. Section 124174.6 of the Health and Safety Code is amended to read:

124174.6. The department shall establish a grant program within the Public School Health Center Support Program to provide technical assistance, and funding for the expansion, renovation, and retrofitting of existing school health centers, and the development of new school health centers, in accordance with the following procedures and requirements:

(a) A school health center receiving grant funds pursuant to this section shall meet or have a plan to meet the following requirements:

(1) Strive to provide a comprehensive set of services including medical, oral health, mental health, health education, and related services in response to community needs.

(2) Provide primary and other health care services, provided or supervised by a licensed professional, which may include all of the following:

(A) Physical examinations, immunizations, and other preventive medical services.

(B) Diagnosis and treatment of minor injuries and acute medical conditions.

(C) Management of chronic medical conditions.

(D) Basic laboratory tests.

(E) Referrals to and followup for specialty care.

(F) Reproductive health services.

(G) Nutrition services.

(H) Mental health services provided or supervised by an appropriately licensed mental health professional may include: assessments, crisis intervention, counseling, treatment, and referral to a continuum of services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs. School health centers providing mental health services as specified in this section shall consult with the local county mental health department for collaboration in planning and service delivery.

(I) Oral health services that may include preventive services, basic restorative services, and referral to specialty services.

(3) Work in partnership with the school nurse, if one is employed by the school or school district, to provide individual and family health education; school or districtwide health promotion; first aid and administration of medications; facilitation of student enrollment in health insurance programs; screening of students to identify the need for physical, mental health, and oral health services; referral and linkage to services not offered onsite; public health and disease surveillance; and emergency response procedures. A school health center may receive grant funding pursuant to this section if the school or school district does not employ a school nurse. However, it is not the intent of the Legislature that a school health center serve as a substitute for a school nurse employed by a local school or school district.

(4) Have a written contract or memorandum of understanding between the school district and the health care provider or any other community providers that ensures coordination of services, ensures confidentiality and privacy of health information consistent with applicable federal and state laws, and integration of services into the school environment.

(5) Serve all registered students in the school regardless of ability to pay.

(6) Be open during all normal school hours, or on a more limited basis if resources are not available, or on a more expansive basis if dictated by community needs and resources are available.

(7) Establish protocols for referring students to outside services when the school health center is closed.

(8) Facilitate transportation between the school and the health center if the health center is not located on school or school district property.

(b) Beginning on or before January 1, 2025, planning grants shall be available in amounts between twenty-five thousand dollars ($25,000) and fifty thousand dollars ($50,000) for a 6- to 12-month period to be used for the costs associated with assessing the need for a school health center in a particular community or area, and developing the partnerships necessary for the operation of a school health center in that community or area. Applicants for planning grants shall be required to have a letter of interest from a school or district if the applicant is not a local education agency. Grantees provided funding pursuant to this subdivision shall be required to do all of the following:

(1) Seek input from students, parents, school nurses, school staff and administration, local health providers, and if applicable, special population groups, on community health needs, barriers to health care and the need for a school health center.

(2) Collect data on the school and community to estimate the percentage of students that lack health insurance and the percentage that are eligible for Medi-Cal benefits, or other public programs providing free or low-cost health services.

(3) Assess capacity and interest among health care providers in the community to provide services in a school health center.

(4) Assess the need for specific cultural or linguistic services or both.

(c) Beginning on or before January 1, 2025, facilities and startup grants shall be available in amounts between twenty thousand dollars ($20,000) and two hundred fifty thousand dollars ($250,000) per year for a three-year period for the purpose of establishing a school health center, with the potential addition of one hundred thousand dollars ($100,000) in the first year for facilities construction, purchase, or renovation. Grant funds may be used to cover a portion or all of the costs associated with designing, retrofitting, renovating, constructing, or buying a facility, for medical equipment and supplies for a school health center, or for personnel costs at a school health center. Preference will be given to proposals that include a plan for cost sharing among schools, health providers, and community organizations for facilities construction and renovation costs. Applicants for facilities and startup grants offered pursuant to this subdivision shall be required to meet the following criteria:

(1) Have completed a community assessment determining the need for a school health center.

(2) Have a contract or memorandum of understanding between the school district and the health care provider, if other than the district, and any other provider agencies describing the relationship between the district and the school health center.

(3) Have a mechanism, described in writing, to coordinate services to individual students among school and school health center staff while maintaining confidentiality and privacy of health information consistent with applicable state and federal laws.

(4) Have a written description of how the school health center will participate in the following:

(A) School and districtwide health promotion, coordinated school health, health education in the classroom or on campus, program/activities that address nutrition, fitness, or other important public health issues, or promotion of policies that create a healthy school environment.

(B) Outreach and enrollment of students in health insurance programs.

(C) Public health prevention, surveillance, and emergency response for the school population.

(5) Have the ability to provide the linguistic or cultural services needed by the community. If the school health center is not yet able to provide these services due to resource limitations, the school health center shall engage in an ongoing assessment of its capacity to provide these services.

(6) Have a plan for maximizing available third-party reimbursement revenue streams.

(d) Beginning on or before January 1, 2025, sustainability grants shall be available in amounts between twenty-five thousand dollars ($25,000) and one hundred twenty-five thousand dollars ($125,000) per year for a three-year period for the purpose of operating a school health center, or enhancing programming at a fully operational school health center, including oral health or mental

health services. Applicants for sustainability grants offered pursuant to this subdivision shall be required to meet all of the criteria described in subdivision (c), in addition to both of the following criteria:

(1) The applicant shall be eligible to become or already be an approved Medi-Cal provider.

(2) The applicant shall have ability and procedures in place for billing public insurance programs and managed care providers.

(3) The applicant shall seek reimbursement and have procedures in place for billing public and private insurance that covers students at the school health center.

(e) The department shall award technical assistance grants through a competitive bidding process to qualified contractors to support grantees receiving grants under subdivisions (b), (c), and (d). A qualified contractor means a vendor with demonstrated capacity in all aspects of planning, facilities development, startup, and operation of a school health center.

(f) The department shall also develop a request for proposal (RFP) process for collecting information on applicants, and determining which proposals shall receive grant funding. The department shall give preference for grant funding to the following schools:

(1) Schools in areas designated as federally medically underserved areas or in areas with medically underserved populations.

(2) Schools with a high percentage of low-income and uninsured children and youth.

(3) Schools with large numbers of limited English proficient (LEP) students.

(4) Schools in areas with a shortage of health professionals.

(5) Low-performing schools with Academic Performance Index (API) rankings in the deciles of three and below of the state.

(g) Moneys shall be allocated to the department annually for evaluation to be conducted by an outside evaluator that is selected through a competitive bidding process. The evaluation shall document the number of grantees that establish and sustain school health centers, and describe the challenges and lessons learned in creating successful school health centers. The evaluator shall use data collected pursuant to Section 124174.3, if it is available, and work in collaboration with the Public School Health Center Support Program. The department shall post the evaluation on its internet website.

(h) Recipient of grants given pursuant to this section shall, when contracting for services with the grant moneys, give preference to non-law enforcement entities.

SEC. 4. Title 10.3 (commencing with Section 14138) is added to Part 4 of the Penal Code, to read:

TITLE 10.3. Department of Justice Violence Reduction Grant Program

14138. (a) The Department of Justice shall administer a grant program for the purpose of improving public safety and community health and well-being, especially amongst those communities that are impacted by violence and gang involvement.

(b) Grants awarded pursuant to this section shall be used to support, expand, and replicate evidence-based, focused-deterrence collaborative programs that conduct outreach to targeted gangs and offer supportive services in order to preemptively reduce and eliminate violence and gang involvement. These programs shall be primarily designed to reduce violent crimes by bringing together a collaborative partnership to communicate to individuals who are identified as having the highest risk of perpetrating or being victimized by violence or gang involvement in the near future that there are tailored services and support available to help them step away from violence. The supportive services shall include, but are not limited to, job training, health care, and crisis response to shootings and violence, among other services. ***The department shall give priority for funding to community-based organizations and nonprofit organizations.***

(c) Grants pursuant to this section shall be made on a competitive basis with preference to cities and local jurisdictions that are disproportionately impacted by violence and gang involvement, and ***with preference*** to community-based organizations that serve the residents of those cities and local jurisdictions.

(d) An applicant for a grant pursuant to this section shall submit a proposal, in a form prescribed by the department, which shall include, but not be limited to, all of the following:

(1) Clearly defined and measurable objectives for the grant.

(2) A statement describing how the applicant proposes to use the grant to implement an evidence-based, focused-deterrence violence reduction initiative in accordance with this section.

(3) A statement describing how the applicant proposes to use the grant to enhance coordination of existing violence prevention and intervention programs and minimize duplication of services.

(4) Evidence indicating that the proposed violence reduction initiative would likely reduce the incidence of homicides, shootings, aggravated assaults, and gang involvement.

(e) In awarding grants pursuant to this section, the department shall give preference to applicants whose grant proposals demonstrate the greatest likelihood of reducing the incidence of violence and gang involvement in the applicant's community, without contributing to mass incarceration.

(f) The amount of funds awarded to an applicant shall be commensurate with the scope of the applicant's proposal and the applicant's demonstrated need for additional resources to address violence in the applicant's community.

(g) Each grantee shall commit a cash or in-kind contribution equivalent to the amount of the grant awarded under this section.

(h) Each city and other local jurisdiction that receives a grant pursuant to this section shall distribute no less than 50 percent of the grant funds to one or both of the following types of entities:

(1) Community-based organizations.

(2) Public agencies or departments that are primarily dedicated to community safety or violence prevention.

(i) The department shall form a grant selection advisory committee, including, without limitation, persons who have been impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing evidence-based violence and gang involvement reduction initiatives, including initiatives that incorporate public health and community-based approaches.

(j) The department may use up to 7 percent of the funds appropriated for the program described in this section each year for the costs of administering the program, including, without limitation, the employment of personnel, providing technical assistance to grantees, and evaluation of violence and gang involvement reduction initiatives supported by the program pursuant to this section.

(k) Each grantee shall report to the department, in a form and at intervals prescribed by the department, their progress in achieving the grant objectives.

(l) The department shall, by no later than 90 days following the close of each grant cycle, prepare and submit a report to the Legislature in compliance with Section 9795 of the Government Code regarding the impact of the violence prevention initiatives supported by the program pursuant to this section.

(m) The department shall make evaluations of the grant program available to the public.

SEC. 5. Chapter 3.4 (commencing with Section 5660) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 3.4. Parks and Recreation for Youth

5660. (a) The department shall award grants to local governments and, ***with preference,*** to community-based organizations for the purpose of supporting existing and creating new parks and recreation opportunities, as well as supporting existing and creating new summer programs for youth, including, but not limited to, extended park hours and expanded programming for nighttime

sports, educational activities, and visual and performing arts opportunities, in order to create and enhance recreation- and health-based interventions for youth during peak times of violence.

(b) In developing the grant program, the department shall do both of the following:

(1) Develop criteria, procedures, and accountability measures as may be necessary to implement the grant program.

(2) Administer the grant program to ensure that priority is given to underserved populations, including both urban and rural areas and low-income communities, where participation in outdoor recreation- and health-based activities will best serve youth as intervention and deterrence from violence.

(c) The department shall give priority for funding to outdoor recreation- and health-based intervention programs during peak times of violence that primarily provide outreach to and serve youth who are impacted by violence and gang involvement in their communities. ***When available, the department shall additionally give priority for funding to community-based organizations and nonprofit organizations.***

(d) The department may give additional consideration to outdoor recreation- and health-based intervention programs during peak times of violence that do any of the following:

(1) Maximize the number of participants that can be served.

(2) Demonstrate partnerships between public, private, and nonprofit entities.

(3) Contribute to healthy lifestyles, violence prevention and gang deterrence, and improved outdoor recreational and health experiences.

(4) Include service learning and community outreach components for purposes of building partnerships between participants and local communities.

(e) In implementing the grant program, the department shall work with relevant stakeholders to promote and implement the grant program in a manner that effectively reaches a wide geography throughout the state and ensures that regions most impacted by violence and gang involvement are adequately considered with an emphasis on addressing the violence prevention and gang deterrence needs within these regions.

5661. The department shall gather information from applicants following each award year for purposes of evaluating the effectiveness of selected programs in achieving the overall objectives of the grant program. Notwithstanding Section 10231.5 of the Government Code, the department shall annually summarize and report this information for the previous award year to the appropriate policy, budget, and fiscal committees of the Legislature. The information in the annual report shall

include the total number of youth served, the total number and types of entities that received grant awards, appropriate recommendations to improve the grant program, partnerships formed, educational objectives achieved, the total number of applications received, and the total number of youth who would have been served if all applicants for the award year received grant awards.

5662. The department shall adopt guidelines it determines are necessary to carry out the purposes of this chapter. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the adoption of guidelines pursuant to this section. The department shall develop a process for public comment and review of the guidelines that involves three public hearings in three different parts of the state before the adoption of those guidelines.

SEC. 6. Chapter 5 (commencing with Section 1450) of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

SEC. 7. Chapter 6 (commencing with Section 2300) is added to Division 2.5 of the Welfare and Institutions Code, to read:

CHAPTER 6. Youth Reinvestment Grant Program

2300. (a) The Office of Youth and Community Restoration shall establish the Youth Reinvestment Grant Program for the purposes described in this chapter.

(b) The Youth Reinvestment Fund is hereby created. Moneys in the fund shall be available, upon appropriation by the Legislature, only for the purposes of this chapter.

(c) Funds appropriated for the Youth Reinvestment Grant Program shall be allocated in each fiscal year as follows:

(1) Three percent shall be used for administrative costs to the office resulting from the implementation of this chapter.

(2) Five hundred thousand dollars ($500,000) for evaluation of the Youth Reinvestment Grant Program as described in Section 2305.

(3) Five hundred thousand dollars ($500,000) for technical assistance to grantees as described in Section 2305.

(4) Ten percent for Native American youth diversion programs pursuant to Section 2302.

(5) The remaining funds shall be used for youth diversion programs pursuant to Section 2303.

2301. For the purposes of this chapter, the following definitions apply:

(a) "Applicant" means an eligible tribal government, tribal organization, or a nonprofit community-based organization that meets the requirements of Section 2302 or 2303.

(b) "Area of high need" means either of the following:

(1) A city or a ZIP Code with rates of youth arrests that are higher than the county average, based on available arrest data, as described by the applicant.

(2) A city or a ZIP Code with racial or ethnic disparities in youth arrests that are higher than their representation in the county population, as described by the applicant.

(c) "Diversion" means a nonpunitive response to address a youth's conduct without involving a youth formally in the juvenile justice system.

(d) "Diversion program" means a program that promotes positive youth development by relying on responses that prevent a youth's involvement or further involvement in the justice system. Diversion programs, which may follow a variety of different models, aim to divert youth from justice system involvement at the earliest possible point.

(e) "Mixed-delivery system" means a system of adolescent development and education support services delivered through a combination of programs, providers, and settings that include partnerships between community-based nonprofit organizations and public agencies and that is supported with a combination of public and private funds.

(f) "Office" means the Office of Youth and Community Restoration.

(g) "Referring agency" means organizations or agencies that may refer youth to diversion programs, including, but not limited to, education, law enforcement, child welfare, behavioral health, and public health entities.

(h) "Trauma-informed" means an approach that involves an understanding of adverse childhood experiences and responding to symptoms of chronic interpersonal trauma and traumatic stress across the lifespan of an individual.

(i) "Youth" means a person who is subject to the jurisdiction of the juvenile court.

2302. (a) The office shall allocate funds pursuant to Section 2300 through a three-year competitive grant program for the purpose of implementing a mixed-delivery system of trauma-informed health and development diversion programs for Native American youth.

(b) In addition to the conditions described in Section 2304, an entity is eligible for funding under this section if it is not otherwise excluded by another law, and is one of the following:

(1) A federally recognized Indian tribe, as defined in Section 1603(14) of Title 25 of the United States Code.

(2) A tribal organization, as defined in Section 1603(26) of Title 25 of the United States Code.

(3) An Urban Indian Organization (UIO), as defined in Section 1603(29) of Title 25 of the United States Code.

(4) A nonprofit organization whose board of directors is majority controlled by Native Americans, including organizations that are fiscally sponsored.

(c) Applicants who receive funding from a grant pursuant to this section shall be nongovernmental entities, with the exception of tribal government applicants, and shall not be law enforcement or probation entities.

2303. (a) The office shall allocate funds pursuant to Section 2300 through a three-year competitive grant program for the purpose of implementing a mixed-delivery system of trauma-informed health and development diversion programs for youth.

(b) In addition to the conditions described in Section 2304, in order to be eligible, an applicant shall be a nonprofit organization that is tax exempt pursuant to Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

(c) Applicants who receive funding from a grant pursuant to this section shall be nongovernmental entities and shall not be law enforcement or probation entities.

2304. The office shall distribute grants pursuant to Sections 2302 and 2303 with all of the following conditions:

(a) An applicant shall be awarded no less than fifty thousand dollars ($50,000) and no more than two million dollars ($2,000,000).

(b) Applicants from two or more local jurisdictions may apply for funding under this chapter on a regional effort basis and receive the aggregate amount of funds that they would have received if awarded as an independent applicant.

(c) Grants shall be distributed in three installments. The first installment shall be distributed on the first day of the grant contract. The second installment shall be distributed no later than the first day of the second year of the grant contract. The third installment shall be distributed no later than the first day of the third year of the grant contract. The second and third installments shall be contingent on the applicant fulfilling the grant obligations and reporting requirements to the office.

(d) Funds shall be awarded to applicants who have obtained an official letter from at least one referring agency demonstrating the agency's intent to refer diverted youth to the diversion program to provide the youth with trauma-informed health and development services. For regional applications, letters of intent shall be required for each jurisdiction proposed in the application.

(e) Diversion services shall be provided in communities described as areas with high needs.

(f) Services shall be evidence based or research supported, trauma informed, culturally relevant, gender responsive, and developmentally appropriate.

(g) Applicants shall have experience effectively serving populations of youth who are juvenile justice system-involved or at-risk of system involvement.

(h) Priority shall be given to organizations that employ people with lived experience as a youth in the juvenile justice system.

(i) Diversion programs shall include alternatives to arrest, incarceration, and formal involvement with the justice system with a priority on programs that divert youth at the earliest possible point of involvement. Diversion programs shall also include one or more of the following:

(1) Educational services, including academic and personal development services.

(2) Career development services, including employment preparation, vocational training, internships, and apprenticeships.

(3) Mentoring services, including credible messenger services.

(4) Behavioral health services, including substance use treatment.

(5) Mental health services.

(6) Housing services, including permanent, short-term, and emergency housing services.

(7) Personal development and leadership training programs.

(8) Prosocial activities, including cultural enrichment programs and services.

2305. (a) The office shall be responsible for administration, oversight, and compliance of the program under this chapter and shall perform all the following duties:

(1) Support grantee data collection and analysis and require grantees to demonstrate outcomes of the funded programs.

(2) (A) Set aside five hundred thousand dollars ($500,000) of funds appropriated for purposes of the program, exclusive of the funds set aside for administrative costs to the office pursuant to

subdivision (c) of Section 2300, to contract with a research firm or university to conduct a statewide evaluation of the program and youth outcomes over a three-year grant period.

(B) The office shall make available on its internet website a report of grantees, projects, and outcomes at the state and local levels within 180 days of completion of the program.

(C) The office shall assist the research firm or university by providing relevant, existing data for the purposes of tracking outcomes. Outcomes measured may include, but are not limited to, any of the following:

(i) Reductions in law enforcement responses to youth for low-level offenses, court caseloads and processing, days the youth spend in detention, placement of youth in congregate care, school and placement disruptions, and facility staff turnover.

(ii) Reduction in the number of school suspensions and expulsions.

(iii) Improvement in the health and well-being of the youth, housing and community stability, educational attainment, and connections to employment opportunities.

(D) Projected state and local cost savings as a result of the diversion programming.

(3) (A) Set aside five hundred thousand dollars ($500,000) of funds appropriated for purposes of the program, exclusive of the funds set aside for administrative costs and evaluation, to contract with a technical assistance provider to support implementation of the program.

(B) Support from the technical assistance provider to the grantees shall include all of the following:

(i) Provide grantees with support in establishing and maintaining relationships with system and community stakeholders, including public agencies, labor unions, tribal governments and communities, nonprofit organizations, and youth and families most impacted.

(ii) Provide grantees with training and support in implementing best practices and trauma informed, culturally relevant, gender responsive, and developmentally appropriate approaches to serving youth.

(iii) Create peer learning opportunities for grantee organizations to learn from and alongside one another.

(iv) Provide grantees with administrative and technical support to ensure compliance with data reporting, evaluation, and applicable laws, including confidentiality and diversion eligibility.

(C) The technical assistance provider shall have experience in all the following areas:

(i) Developmental research and best practices for serving youth involved in the justice system and youth at risk of involvement, including children who have experienced commercial sexual exploitation and youth in the dependency system.

(ii) Research and best practices on systems that refer youths to the juvenile justice system, including the education, immigration, and child welfare systems.

(iii) Presenting and disseminating best practices on alternatives to incarceration and system involvement.

(iv) Working with and supporting community-based organizations serving youth involved in the justice system and youth at-risk of involvement in California.

(v) Collaborating with juvenile justice system stakeholders.

(vi) Working with and supporting Native American organizations and communities.

(vii) Working with juvenile justice system-involved youth and communities and with elevating youth leadership.

(viii) Priority shall be given to organizations that employ people with lived experience as youth in the juvenile justice system.

SEC. 8. Chapter 9 (commencing with Section 8270) is added to Division 8 of the Welfare and Institutions Code, to read:

CHAPTER 9. Cognitive Behavioral Intervention for Trauma Pilot Program

8270. (a) The California Health and Human Services Agency shall administer a five-year pilot program to evaluate applications and award grants to schools located in the Counties of Alameda, Fresno, Merced, Tulare, Kern, and Los Angeles for the purpose of implementing the Cognitive Behavioral Intervention for Trauma in Schools (CBITS) program, and to an organization to study specified student outcomes, for the improvement in the health and well-being of the youth and school and community stability. For the purposes of this program, "school" includes charter schools.

(b) The agency shall award a grant to a school that meets all of the following criteria:

(1) The school uses the award for the purpose of implementing the CBITS program.

(2) The school is located in a region most impacted by gun violence as indicated by violent crime data and whose students typically are unable to access traditional services, including, but not limited to, students who are low income or homeless, display symptoms of post-traumatic stress disorder or severe-trauma related symptoms, members of immigrant and refugee groups, students

with disabilities, and students who interact with child protective systems or who have had contact with the juvenile justice system.

(3) The school presents substantial plans for the collection and distribution of information to an appointed research organization and for fidelity monitoring of its CBITS program.

(4) Any other related criteria required by the agency.

(c) The agency, when considering the research grant applications, shall give preference to research organizations or universities that meet all of the following criteria:

(1) Study under-resourced, chronically traumatized neighborhoods where community violence is prevalent.

(2) Have a demonstrated track record of collaborating with schools to create trauma-informed and trauma-sensitive school environments.

(3) Have a demonstrated track record of studying children and youth who have received school-based trauma recovery care.

(d) A research organization or university that is awarded a grant shall do all of the following:

(1) Report to the agency annually on how grant funds were spent, expected and current preliminary data outcomes, and treatment outcomes, including academic performance, trauma-related symptom rates, and rates of criminal offenses.

(2) Publish a report to the Legislature by December 1, 2028, regarding the effectiveness of the pilot program in improving child outcomes, including, but not limited to, academic performance, truancy rates, disciplinary actions, and rates of criminal offenses.

(3) Ensure any information disseminated to the public is distributed in accordance with Section 13202 of the Penal Code.

(e) Recipient of grants given pursuant to this section shall, when contracting for services with the grant moneys, give priority to community based organizations and nonprofits.

8270.3. This chapter shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 9. 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 high rate of violent crime in the Counties of Alameda, Fresno, Merced, Tulare, Kern, and Los Angeles.

SEC. 10. The sum of two hundred thirty-five million dollars ($235,000,000) is hereby appropriated from the General Fund for the purpose of delivering diversion and alternative-sanction programs, academic- and vocational-education services, mentoring, behavioral health services, and mental health services, as follows:

(a) The sum of fifty million dollars ($50,000,000) to the California Health and Human Services Agency for the purposes of administering the Cognitive Behavioral Intervention for Trauma in Schools (CBITS) pilot program pursuant to Chapter 9 (commencing with Section 8270) of Division 8 of the Welfare and Institutions Code.

(b) The sum of fifty million dollars ($50,000,000) to the Office of Youth and Community Restoration for the purpose of awarding grants pursuant to the Youth Reinvestment Grant Program pursuant to Chapter 6 (commencing with Section 2300) of Division 2.5 of the Welfare and Institutions Code.

(c) The sum of fifty million dollars ($50,000,000) to the Department of Parks and Recreation to award grants pursuant to Chapter 3.4 (commencing with Section 5660) of Division 5 of the Public Resources Code.

(d) The sum of fifty million dollars ($50,000,000) to the State Department of Public Health to provide operational grants to school-based health centers in order to provide physical health and mental health services to youth on school sites pursuant to Article 10 (commencing with Section 124174) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

(e) The sum of thirty-five million dollars ($35,000,000) to the Department of Justice for the purposes of providing funds to support evidence-based, focus-deterrence collaborative programs that conduct direct outreach to targeted gangs in order to preemptively reduce and eliminate violence and gang involvement pursuant to Title 10.3 (commencing with Section 14138) of Part 4 of the Penal Code.

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

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

AB 943 (Kalra) – As Introduced February 14, 2023

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to publish its monthly demographic data in a manner disaggregating by major Asian, American Indian, and Pacific Islander groups. Specifically, **this bill**:

1) Requires CDCR to publish its monthly population data disaggregated by race and ethnicity, including but not limited to, 28 ethnicity types.

2) States that when collecting voluntary self-identification information pertaining to race or ethnic origin, CDCR must use separate collection categories and tabulations for American Indian, Alaska Native, and each major Asian and Pacific Islander group, including but not limited to Chinese, Japanese, Filipino, Laotian, Cambodian, Vietnamese, Thai, Pakistani, Samoan, and other specified ethnicities.

3) Requires that the data, except for personal identifying information, be publically available on CDCR's website.

EXISTING LAW:

1) Provides that every public agency or bona fide research institution concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with criminal offender record information, including criminal court records, as required for the performance of its duties, including the conduct of research. (Pen. Code, § 13202.)

2) Requires any state agency, board, or commission that collects demographic data as to ethnicity to use separate categories for each major Asian and Pacific Islander group such as Chinese, Japanese, Korean, Cambodian, Hawaiian, and others. (Gov. Code, § 8310.5.)

3) Requires the Department of Industrial Relations, the Civil Rights Department, and in some cases, the State Department of Public Health, to collect and tabulate data for each major Asian and Pacific Islander group. (Gov. Code, § 8310.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 943 ensures a better understanding of the needs of all incarcerated and formerly incarcerated people by requiring CDCR to publish data disaggregated by race and ethnicity with specific categories for each major Asian and

Pacific Islander group and Indigenous people. CDCR's current aggregation and literal "othering" of such a large, diverse number of ethnicities as one category further perpetuates existing biases and systemic inequities. With accurate data, this bill ensures the community and state can provide more well-rounded, culturally competent services to ensure all community members thrive."

2) **CDCR Population Data**: Currently, CDCR publishes a number of data points regarding incarcerated individuals that include age, gender, type of offense, and ethnicity, among other things. (CDCR) *Offender Data Points.* <https://public.tableau.com/app/profile/cdcr.or/viz/OffenderDataPoints/SummaryInCustodyandParole> [as of Mar. 15, 2023].) When it comes to ethnicity, CDCR stated:

> "Ethnicity is self-reported by offenders who choose from a list of 28 ethnicity types. Common examples of ethnicity choices captured in the "Others" category include American Indian, Asian, and Hawaiian/Pacific Islander. This category also includes offenders whose ethnicity is unknown or not self-reported."
>
> (*Id.*)

However, when publicly reporting that data, CDCR divides it into four categories: White, Black, Hispanic, and "others." (*Id.*) According to the data, in February of this year the incarcerated population totaled 95,460 individuals; of those, 45.7% were Hispanic, 27.8% were Black, 20% were White, and 6.5% were "Other." (*Id.*)

This bill would require that CDCR not only collect, but also publish the data in a disaggregated format of at least 28 ethnicity types. This bill would also require that, when collecting the data, CDCR use separate collection categories and tabulations specifically for American Indians, Alaska Natives, as well as each major Asian and Pacific Islander group including, but not limited to Vietnamese, Cambodian, Chinese, Korean, Hmong, Samoan, Tongan, Guanamian or Chamorro, and others. The findings and declarations of the bill state that disaggregated data can provide better insight on disparities in the system. In the findings and declarations, this bill points out that in 2010, a San Francisco Juvenile Probation Department Report showed that Samoan youth made up 5% of all youth booked in its juvenile hall that year, whereas Native Hawaiians and other Pacific Islanders made up only .5% of San Francisco's total county population.

3) **Population Data Disaggregation**: In the U.S. the census is one of the major methods used to collect information regarding race and ethnicity. It has evolved quite significantly from its first iteration, in which the only categories were free white males and females, all other free persons, and slaves. (Pew Research. *The changing categories the U.S. census has used to measure race*. (updated 2020) <https://www.pewresearch.org/fact-tank/2020/02/25/the-changing-categories-the-u-s-has-used-to-measure-race/> [as of Mar. 15, 2023].) Over the years, the census categories evolved as the population and attitudes towards race and ethnicity did. The first racial category for Asians was introduced in 1870 with "Chinese." (*Id.*) It was not until 1910 when "Other" was offered as a race category. (*Id.*) From the 1920s to the 1940s, Asian Indians were called "Hindus," regardless of what their religion actually was. (*Id.*) In the year 2000, Americans could for the first time choose more than one race to describe themselves. (*Id.*) In the latest census, respondents could specify whether they were

German, Lebanese, African American, Somali, Chinese, Japanese, or other specific ethnicity. (*Id.*)

Fortunately, most of these changes seem to be driven by a greater awareness and appreciation of the diverse population in the U.S. This evolution has not occurred without some controversies though. Recently, in California, AB 1726 (Bonta) Chapter 607, Statutes of 2016, that sought to disaggregate the population data in a manner similar to this bill, caused some debate over how finely population data should be disaggregated. (NBC News. *California Data Disaggregation Bill Sparks Debate in Asian-American Community*. (Aug. 26, 2016) <https://www.nbcnews.com/news/asian-america/california-data-disaggregation-bill-sparks-debate-asian-american-community-n638286> [as of Mar. 15, 2023].) In one of its original versions, the bill would have required state education organizations to break down demographic data. (*Id.*) Proponents of the AB 1726 said that separating the demographic data would help better expose disparities in the healthcare and education system. They believed the mandate could have been useful for Southeast Asian students who tend to have lower academic achievement rates. (*Id.*) Critics feared it could be a backdoor way of ending California's ban on affirmative action and said it further divided up Asians and Pacific Islanders into unnecessary and hyphenated groups. (*Id.*) An online petition in support of AB 1726 garnered approximately 1,700 signatures, while an opposing petition collected approximately 14,000. (*Id.*) Ultimately, AB 1726 was enacted, however, removed from its requirement were state education organizations. (*Id.*)

The year prior to AB 1726, Governor Brown had vetoed a similar bill, AB 176 (Bonta). In his veto message, the Governor stated:

> "Assembly Bill 176 would require the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges and the Department of Managed Health Care to collect and report demographic information for Asians, Native Hawaiians and Pacific Islanders by specified ethnic categories after the next census.
>
> To be sure, there is value in understanding data on race, ethnicity, gender and other aspects of identity. On a broad level, these demographic data can signal important changes in society. On a practical level, they can help elucidate how our laws and programs can be shaped to reflect a changing population.
>
> Despite this utility, I am wary of the ever growing desire to stratify. Dividing people into ethnic or other subcategories may yield more information, but not necessarily greater wisdom about what actions should follow. To focus just on ethnic identity may not be enough.
>
> CSU, community colleges, and UC already provide many ways in which to self-identify, including choosing among several ethnic identities. In the case of CSU, there are 50 choices for API applicants alone. Codifying the collection and reporting of at least 12 API groups several years into the future appears unnecessary, or at least premature."

Although there seems to have been controversy regarding similar distinctions, at this time, there is no opposition to this bill. This bill seems to be reflective of the progressive shift in

our population data gathering and disaggregation.

4) **Protecting Privacy**: One thing the author may want to consider is determining subgroup size while protecting possibly personal identifying information. (National Center for Education Statistics. *Best Practices for Determining Subgroup Size in Accountability Systems While Protecting Personally Identifiable Student Information*. (2017) <http://ies.ed.gov/pubsearch> [as of Mar. 15, 2023].) Essentially, if the number of a subgroup is small enough, for example if there were only one person from a certain ethnicity in the CDCR population, then anyone looking at that data could potentially know whether that person was still incarcerated or released. This bill does state that personal identifying information must be kept confidential, but does not use more specific language. For example, existing law that deals with population data states that demographic data that would permit identification of individuals must not be published. (Gov. Code, § 8310.7.)

5) **Argument in Support**: According to the *Immigrant Legal Resource Center*, "Currently, CDCR publishes monthly population data on the internet. It is stated that people in the system are able to self-report their ethnicity and choose from 28 categories. However, publicly available data does not list all of these categories. Instead, data is only available in four ethnicities and races: Hispanic, White, Black, and Others. In January 2023, there were 95,528 people in CDCR's custody, 6,217 of them were 'Others,' meaning there could be over 6,000 API and Indigenous people in the system, without being recognized as so.

"Missing data on Asian, Pacific Islander and Indigenous people create several critical challenges for these communities and the state. First, aggregated data masks the language needs that exist in the Asian and Pacific Islander population in the prison system. Research has shown that more than half of the Vietnamese population in California have limited English proficiency(LEP), and Thai, Chinese and Koreans are at around 40 percent. In the Pacific Islander community, Tongan and Fijian Americans have the highest LEP rates, at about 20 percent of the population. CDCR must release accurate data so that currently incarcerated people have a fair chance in obtaining language assistance when applying to parole, sentence reduction applications and other legal proceedings.

"Second, without accurate data, the state is omitting a big part of the Asian community and closes any door for the state and the public to identify program gaps that exist, such as the unique struggles and resiliency of the Southeast Asian community and the trauma that they face as refugees. According to a survey done by Asian Prisoner Support Committee, about 68 percent of respondents who are currently and formerly incarcerated said that war "was the main cause of displacement from their country." More research shows that 2 decades after the Cambodian civil war, where over 150,000 refugees fled to the U.S. since 1975, Cambodian refugees continue to experience high rates of Posttraumatic Stress Disorder, or PTSD (62%). Compounded by poverty, lack of language accessible mental health counseling, difficulties in schools, many Southeast Asian youth look for a sense of belonging in gangs. Accurate data can help policymakers and community leaders to understand challenges and opportunities facing this population in the prison system and help policy makers and community leaders to create culturally-sensitive in-prison and reentry programs to address unique issues that face this population.

"Third, under-reporting and not-reporting the number of Asians, Pacific Islanders and Indigenous people erase and diminish their existence and experiences. Masking Asians,

Pacific Islanders and Indigenous people under "Others" perpetuates systemic racism because lack of data robs communities of opportunities to advocate for better policies that serve those groups. As an example, disaggregated data from the San Francisco Juvenile Probation Department shows that while Samoans represented 0.56 percent of the county's population in 2010, they made up 5 percent of the county's Juvenile Hall population. A 2021 report shows that while the incarceration rate for multiple racial and ethnic groups fell from 2010-2019, the incarceration rate for Asian men rose by 7 percent, and Native Hawaiian and other Pacific Islander men rose by a staggering 44%. The state must take action to publish complete, accurate data to improve racial equity for all Californians."

6) **Prior Legislation**:

a) AB 1726 (Bonta), Chapter 607, Statutes of 2016, required, among other things, the State Department of Public Health to collect data in a manner similar to this bill.

b) AB 176 (Bonta), of the 2015-2016 Legislative session, would have required state health and education agencies collect population data disaggregated in a manner similar to this bill. AB 176 was vetoed by the Governor.

c) AB 1088 (Eng) Chapter 689, Statutes of 2011, was substantially similar to this bill and applied data disaggregation requirements to the Department of Industrial Relations and the Department of Fair Employment and Housing.

d) AB 1737 (Eng) of the 2009-2010 Legislation Session, was substantially similar to this bill and would have applied data disaggregation requirements to the departments of Health Care Services, Public Health, Social Services, Employment Development, State Personnel Board, and other specified agencies. AB 1737 was held in Assembly Appropriations Committee.

e) AB 295 (Lieu) of the 2007-2008 Legislative Session, would have required various state entities to report collected demographic data according to each major Asian-Pacific Islander groups and make that data available to the public to the extent that disclosure did not violate confidentiality. AB 295 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment
Asian Prisoner Support Committee
California Immigrant Policy Center
California Nurses Association
California Pan - Ethnic Health Network
California Public Defenders Association (CPDA)
Immigrant Legal Resource Center
San Francisco Public Defender
Southeast Asia Resource Action Center

Opposition

None

Analysis Prepared by: Mureed Rasool / 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 958 (Santiago) – As Amended March 14, 2023

SUMMARY: Makes the right to personal visits for incarcerated persons a civil right. Specifically, **this bill**:

1) States that a person sentenced to imprisonment in a state prison or in a county jail pursuant to realignment shall not be deprived of their rights unless the deprivation of those rights is necessary and narrowly tailored to further a compelling security interest of the government.

2) Adds to the list of civil rights of persons sentenced to imprisonment in a state prison or in a county jail pursuant to realignment, the right to receive personal visits, including in-person contact visits, except as specified. States that these civil rights shall not be infringed upon except as necessary and only if narrowly tailored to further a compelling security interest of the government.

3) Provides that, in order to further the constitutionally protected right of a family member, as defined, and intimate partner, as defined, of an incarcerated person to maintain a relationship with that person, the Department of Corrections and Rehabilitation (CDCR) shall not infringe on a family member's or intimate partner's right to visit an incarcerated person unless the incarcerated person freely withholds consent or if necessary and narrowly tailored to further a compelling security interest of the government.

4) Provides that amendments to existing and any future CDCR regulations that may impact the visitation of an incarcerated person shall recognize and consider the right to personal visits, including in-person contact visits as a civil right, and family members' and intimate partners' right to visits as a civil right.

5) Provides that CDCR shall not deny or restrict an in-person contact visit, including a family visit, for any of the following reasons:

   a) As a disciplinary sanction against an incarcerated person, except as discipline for commission of a specified offense during a visit;

   b) A visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, whether it resulted in a criminal conviction, other than a conviction for a specified offense;

   c) A visitor's current status of being under supervision, including parole, postrelease community supervision, probation, or informal probation supervision;

d) A visitor's previous incarceration, including incarceration in the facility where the visit will take place;

e) A visitor's pending criminal charges, other than for a specified offense;

f) A visitor's outstanding unpaid fines, fees, or restitution; and,

g) An incarcerated person's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, regardless of whether it resulted in a criminal conviction, other than a conviction for a specified offense.

6) Allows CDCR to deny or restrict an in-person contact visit due to an incarcerated person's criminal history when:

a) Whenever a person is sentenced to state prison for a specified sex offense against the child, as specified;

b) Required or permitted by regulation in existence on or before January 1, 2024, based on convictions or arrests for sex crimes against minors; and,

c) The incarcerated person's conviction is for a registrable sex offense or violence against a family member or against a minor in the person's care or custody, if there is a substantial risk of violence or sexual abuse against that specific visitor.

7) Provides that a visitor or incarcerated person may have their visits denied or restricted based only on the following conduct during a visit:

a) Bringing contraband into the visiting area;

b) Engaging in sexual conduct with a minor;

c) Engaging in sexual conduct with adults outside of a family visit;

d) Committing physical violence during a visit or the visitor screening process; and,

e) Escaping, aiding an escape, or attempting to escape or aid an escape.

8) Provides that CDCR may require an applicant to provide sufficient information to enable it to obtain the applicant's criminal history records from the Department of Justice (DOJ) but shall neither require an applicant to itemize their own criminal history nor consider such voluntarily submitted information in determining whether to approve the application.

9) Provides that, when an incarcerated person is limited to in-person noncontact visits, the length and frequency of their in-person noncontact visits and video calls shall equal the length of in-person contact visits and video calls available to the general population, reasonable space permitting.

10) States that if a request for a visit is denied, both the visitor and the incarcerated person shall receive written notice of the denial within three days of the decision. The notice shall include all of the following:

    a) The date of the decision and its effect together with the name, title, and institutional affiliation of the decision-making official;

    b) The reason for the denial. When the grounds for denial include criminal record information, alleged personal conduct, or any other personal or private information about either party, only the person to whom that information pertains, or about whom the allegations are made, shall receive a detailed specification of the reasons for the denial; and,

    c) Written instructions on all procedures for appeals.

11) Provides that these provisions shall not be interpreted to restrict the legal remedies available to an incarcerated person or to nonincarcerated visitors to dispute or redress denials of visitations.

12) Provides that an incarcerated person shall not be required to withhold consent to a visit as a disciplinary sanction as a means of avoiding a disciplinary sanction or as a condition of participating in or enjoying any privilege or program while incarcerated.

13) States that a visit is "denied or restricted" if it is suspended, revoked, or terminated early and when a visitor is excluded or any other administrative action reduces a specified incarcerated person's or visitor's access to visiting.

14) Allows a visitor to be denied visiting access per reasonable uniformly enforced regulations, communicated to the public with adequate and timely notice, related to identification, dress, intoxication, search procedures, and authorization for visits by minors that are consistent with these provisions. A denial of, or restriction on, visits or visiting access shall not exceed what was permissible under CDCR regulations on January 1, 2024.

15) Defines a "family visit" as an in-person contact visit that occurs overnight in a private, apartment-like facility on prison grounds in which only an eligible incarcerated person and eligible immediate family members, as both are defined in department regulations, may participate.

16) Defines a "disciplinary sanction" as a consequence of being charged with, investigated for, or found guilty of a rule violation, including a change in privilege group.

17) Provides that incarcerated people may be limited to noncontact visits when placed in administrative segregation or security housing units.

18) Requires CDCR to reinstate personal visits, including in-person visits and family visits, that were restricted or prohibited contrary to the standards created in this section prior to January 1, 2024.

19) Requires CDCR to provide at least three days of in-person visitation per week, with a minimum of eight visiting hours per day, plus access to video calls for at least an additional eight hours per week.

20) States that CDCR shall make strenuous efforts to maximize visiting space in order to accommodate as many visitors as possible in family friendly settings.

21) Permits, if in-person visitation is impossible due to a public health emergency, the in-person visiting hours to be replaced by an equal number of video calling hours in addition to the regular video calling hours. Once the emergency is over, in-person visiting shall be immediately reinstated.

22) States legislative findings and declarations.

EXISTING FEDERAL LAW:

1) Prohibits cruel and unusual punishments. (U.S. Const., 8th Amend.)

2) Prohibits States from denying to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend.)

EXISTING STATE LAW:

1) Provides that a person sentenced to imprisonment in a state prison or county jail for a felony may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600, subd. (a).)

2) Provides that each person sentenced to imprisonment in a state prison or to imprisonment in a county jail for a felony has the following civil rights:

   a) To inherit, own, sell, or convey real or personal property;

   b) To correspond, confidentially, with any member of the State Bar or holder of public office;

   c) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office, except as specified;

   d) To initiate civil actions, as specified;

   e) To marry;

   f) To create a power of appointment;

   g) To make a will; and,

   h) To receive specified benefits. (Pen. Code, § 2601, subds. (a)-(h).)

3) Requires that any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of incarcerated persons do all of the following:

   a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and incarcerated persons;

   b) Recognize and consider the important role of visitation in establishing and maintaining a meaningful connection with family and community; and,

   c) Recognize and consider the important role of visitation in preparing an incarcerated person for successful release and rehabilitation. (Pen. Code, § 6400.)

4) Provides that whenever a person is sentenced to the state prison for violating a specified sex offense and the victim of the offense is a child under the age of 18 years, the court shall prohibit all visitation between the defendant and the child victim. (Pen. Code, § 1202.05)

5) Prohibits incarcerated persons from family visits based solely on the fact that the incarcerated person is sentenced to life without the possibility of parole or is sentenced to life and is without a parole date. (Pen. Code, § 6404.)

6) States that every person who, without the permission of the warden or other officer in charge of any state prison, or any jail, communicates with any prisoner or person detained therein, is guilty of a misdemeanor. (Pen. Code, § 4570.5.)

7) Requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized due to a serious or critical medical condition, including imminent danger of dying. When the incarcerated person is in imminent danger of dying, CDCR must allow up to four visitors at one time to visit the incarcerated person. (Pen. Code, § 6401, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 958 would support the children left behind in communities that are heavily impacted by incarceration, improve in-custody conduct, and reduce recidivism by strengthening visiting rights for family members of incarcerated people. Maintaining consistent and meaningful connections between incarcerated persons and their loved ones is often difficult. Incarcerated people can be denied personal visits with family or friends as a disciplinary action unrelated to visitation or the prospective visitor. Some visits are denied due to honest mistakes on the visitor's application or for criminal histories unrelated to abuses of the visitation privilege. The pandemic only further exacerbated the difficulties of maintaining familial bonds. As CDCR reopens its institutions, barriers to visitation remain.

   "AB 958 is a comprehensive bill that removes these barriers to family visitations and helps ensure we keep Californian families connected. This bill demonstrates California's commitment to rehabilitating individuals who are incarcerated. Denying incarcerated people the right to see their loved ones impacts the mental health and well-being of both the

individual and their family members. With this measure, we can ensure we are not punishing innocent family members of incarcerated individuals by denying them the right to visit their loved one, while simultaneously eliminating barriers to one of the most successful methods of reducing recidivism and improving in-custody conduct: keeping families connected."

2) **Codified Civil Rights:** The United States Supreme Court has recognized a constitutional right to maintain parent-child relationships absent a compelling government interest, such as protecting a child from an unfit parent. (*Santosky v. Kramer* (1982) 455 U.S. 745, 753). The United States Court of Appeals for the Ninth Circuit has recognized that this constitutional right logically encompasses a right to maintain a relationship with a life partner. (*United States v. Wolf Child* (2012) 699 F.3d 1082, 1091).

Despite these constitutional guarantees, incarcerated persons do not have a clearly established constitutional right to receive visits, in particular contact visits. (*Overton v. Bazzetta* (2003) 539 U.S. 126, 131; *Dunn v. Castro* (9th Cir. 2010) 621 F.3d 1196, 1202.) The Supreme Court has upheld a variety of restrictions on visitation including denials of contact visitation, as well as limitations on the people allowed to visit an incarcerated person, against First, Eighth, and Fourteenth Amendment challenges. (*Overton*, 539 U.S., *supra,* at p. 133; accord *Dunn*, 621 F.3d, *supra*, at 1206 [upholding temporary prohibition on incarcerated person's right to visitation with his children on First, Eighth, and Fourteenth Amendment grounds].) Only where all visitation privileges have been revoked permanently or for a substantial period of time will the deprivation take on constitutional proportions. (See *Overton*, 539 U.S. at 130; *Dunn*, 621 F.3d at 1204.)

California law used to give incarcerated persons visiting rights greater protection than the U.S. Constitution. Former Penal Code Section 2061 guaranteed incarcerated persons the right to receive personal visits, subject only to such restrictions as were necessary for the reasonable security of the institution. Courts generally considered that statute to be a legislative signal that visiting restrictions should be carefully scrutinized. (*In re French* (1980) Cal.App.3d 74, 84 fn. 22.) However, in 1996, that statutory provision was deleted. Currently, correctional staff can place restrictions on visitation privileges, subject only to a deferential rational basis review. (*Overton, supra,* 539 U.S. 126 at 133 [visitation regulations that bear a rational relation to legitimate penological interests are sufficient].)

Penal Code section 2601 provides that each person serving a sentence in state prison or county jail for a realigned felony has specified civil rights, including the right to inherit, own, sell, or convey real or personal property, the right to correspond confidentially with any member of the State Bar or public office, the right to marry, and the right to make a will, among others. Penal Code section 2600 provides that a person serving a sentence in state prison or county jail for a realigned felony may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. This bill would add the right to personal visits to the list of enumerated civil rights. This bill would also change the standard for depriving an incarcerated person of their rights from a deprivation that "is reasonably related to legitimate penological interests" to a deprivation that is only permitted as necessary and only if narrowly tailored to further the a compelling security interest of the government.

The expansion of the standard for limiting an incarcerated person's civil rights applies to all civil rights afforded to an incarcerated person, not just the new right of visitation. By raising

the standard to one that is narrowly tailored to further a compelling security interest, this bill would narrow the ability of CDCR to limit these enumerated rights, including visitation rights.

3) **Applicable Agencies**: This bill would apply to both state prisons and county jails, with respect to the establishment of visitation as a civil right. It also changes the standard for judicial review, as discussed above, for any limitation of an enumerated civil right imposed by either a county jail or state prison. This bill would only applyto a person who is serving a felony sentence in a county facility, not a lesser sentence.

   The remaining provisions in this bill regulating the rules and regulations for visitations, video calls, and denial of visitations are only applicable to CDCR, leaving county jails broader discretion as to how to implement visitation rights.

   Limiting the requirements of this bill to only incarcerated persons who are serving felony sentences raises equal protection concerns. The Equal Protection Clause requires that all persons who are similarly situated be treated alike. (U.S. Const., 14th Amend; *City of Cleburne v. Cleburne Loving Center, Inc.* (1985) 473 U.S. 432, 439.) An equal protection claim may be established by proving that government officials intentionally discriminated against the incarcerated person where "similarly situated" incarcerated persons were intentionally treated differently, without a rational relationship to a legitimate governmental purpose. (*Village of Hallowbrook v. Olech* (2000) 528 U.S. 562, 564.) Thus, the Legislature should consider whether there is a legitimate purpose to treat individuals serving sentences in county jails for felonies different from those incarcerated in county jails for other reasons.

4) **Positive Impacts of In-Person Visitation**: Decades of research has shown that in-person visitation is beneficial, particularly when it comes to reducing recidivism. One study found that any visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations, which reflects the fact that visitation generally had a greater impact on revocations. The findings further showed that more frequent and recent visits were associated with a decreased risk of recidivism. A 1972 study on visitation that followed 843 people on parole from California prisons found that those who had no visitors during their incarceration were six times more likely to be reincarcerated than people with three or more visitors. Visitation is also correlated with adherence to prison rules. A 2019 study found that one additional visit per month would reduce misconduct by 14 percent. According to another study, misconduct tended to decrease in the three weeks before a visit. This may explain why more frequent visits lead to more consistent good behavior, better overall outcomes and post-release success. Research has also found that visitation is linked to better mental health, including reduced depressive symptoms for incarcerated persons. (Prison Policy Imitative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families* (Dec. 21, 2021) <https://www.prisonpolicy.org/blog/2021/12/21/family_contact/> [as of March 11, 2023].)

5) **Visitation Regulations at Local Correctional Facilities**: The Board of State and Community Corrections (BSCC) regulations on local correctional facilities require facility administrators at all local detention facilities to develop and implement written policies and procedures on visitation. (Cal. Code Regs., tit., 15, § 1062.)

Visiting programs at local correctional facilities must provide for: (1) as many in-person visits and visitors as facility schedules, space, and number of personnel will allow; (2) a publicly posted schedule of facility visiting hours, and if practicable, visiting hours should be made available on weekends, evenings, or holidays; (3) no fewer than two visits totaling at least one hour per incarcerated person each week. (Cal. Code Regs., tit., 15, § 1062, subd. (a).) The policies and procedures must include a schedule to assure that non-sentenced detainees are afforded a visit no later than the calendar day following arrest. (*Ibid.*) Further, visits may not be cancelled unless a legitimate operational or safety and security concern exists. (Cal. Code Regs., tit., 15, § 1062, subd. (b).) All cancelled visits must be documented and reviewed by a facility manager. (*Ibid.*) The regulations allow video visitation to be used to supplement existing visitation programs, but not be used to fulfill the requirements if in-person visitation is requested by an incarcerated person. (Cal. Code Regs., tit., 15, § 1062, subd. (c).) Also, facilities cannot charge for visitation when visitors are onsite and participating in either in-person or video visitation. (Cal. Code Regs., tit., 15, § 1062, subd. (e).)

6) **Existing CDCR Policies on Visitation**: There are three types of visits in CDCR institutions: contact visits, no-contact visits, and family visits. Most incarcerated individuals who are housed in a general population setting may receive contact visits which are not limited in duration except for normal visiting hours or terminations caused by overcrowding to allow other visits to begin. Incarcerated individuals who are still in reception or are segregated from the general population (e.g., Administrative Segregation) are restricted to non-contact visits which occur with a glass partition in between the incarcerated person and the visitor and are limited in time. Finally, some incarcerated individuals are eligible for family visits which take place in private, apartment-like facilities on prison grounds and last approximately 30-40 hours. (CDCR, *Visiting Guidelines* <https://www.cdcr.ca.gov/visitors/inmate-visiting-guidelines/> [as of March 12, 2023].)

According to CDCR's Department Operations Manual (DOM), it is CDCR's policy to "encourage inmates to develop and maintain healthy family and community relationships." (DOM § 54020.1.) CDCR considers it a "privilege for inmates to have personal contact visits while confined in CDCR institutions and facilities" not a right. (*Ibid.*) "Visiting in CDCR institutions and facilities shall be conducted in as accommodating a manner as possible in keeping with the need to maintain order, the safety of persons, the security of the institution/facility, and the requirements of prison activities and operations."

CDCR regulations require all institutions to provide visiting for no less than 12 hours per week. Any reduction of an institution/facility visiting schedule below 12 hours shall require the prior approval of the Secretary or designee. (Cal. Code Regs., tit., 15 § 3172.2.) All adults seeking to visit an incarcerated person are required to provide a completed visiting questionnaire and obtain institution/facility approval before they may be permitted to visit. (Cal. Code Regs., tit., 15 § 3172.) The visiting approval application process includes an inquiry of personal, identifying, and the arrest history information of the prospective visitor sufficient to complete a criminal records clearance and a decision by the institution/facility designated staff to approve or disapprove based upon the information provided. (*Ibid.*) Visits with an incarcerated person may, without prior notification, be terminated, temporarily suspended, or modified in response to an institution emergency as determined by the institution head or designee. (Cal. Code Regs., tit. 15, § 3170, subd. (c).)

CDCR regulations provide the following non-exhaustive list of reasons for the disapproval of a prospective visitor:

i) The prospective visitor has outstanding arrests or warrants, including a Department of Motor Vehicles Failure to Appear notice with no disposition from the court.

ii) The prospective visitor has one felony conviction within the last three years, two felony convictions within the last six years, or three or more felony convictions during the last ten years.

iii) The prospective visitor has any one conviction of the following types of offenses: distributing a controlled substance into or out of a state prison, correctional facility, or jail; transporting contraband, including weapons, alcohol, escape and drug paraphernalia, and cell phones or other wireless communication devices, in or out of a state prison, correctional facility, or jail; aiding or attempting to aid in an escape or attempted escape from a state prison, correctional facility, or jail; or the prospective visitor is a co-offender of the incarcerated individual.

iv) The prospective visitor is a former prison inmate who has not received the prior written approval of the institution head or designee.

v) The prospective visitor is a supervised parolee, probationer, or on civil addict outpatient status and has not received written permission of his or her case supervisor and/or the prior approval of the institution head.

vi) The identity of the prospective visitor or any information on the visiting questionnaire, is omitted or falsified. (Cal. Code Regs., tit. 15, § 3172.1, subd. (b).)

This bill would make a number of changes to CDCR visits. First, this bill prohibits the denial of an in-person contact visit for any of the following reasons:

- As a disciplinary sanction against an incarcerated person, except as discipline for commission of a specified offense during a visit.

- A visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, whether it resulted in a criminal conviction, other than a conviction for a specified offense.

- A visitor's current status of being under supervision, including parole, postrelease community supervision, probation, or informal probation supervision.

- A visitor's previous incarceration, including incarceration in the facility where the visit will take place.

- A visitor's pending criminal charges, other than for a specified offense.

- A visitor's outstanding unpaid fines, fees, or restitution.

- An incarcerated person's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, regardless of whether it resulted in a criminal conviction, other than a conviction for a specified offense.

Next, this bill would provide that a visitor or incarcerated person may be denied visits for following offenses:

- Required by Penal Code Section 1202.05, which prohibits visitation between a defendant and the child victim for specified sex offenses against the child;
- Required or permitted by regulation in existence on or before January 1, 2024, based on convictions or arrests for sex crimes against minors; and,
- The incarcerated person's conviction is for a registrable sex offense or violence against a family member or against a minor in the person's care or custody, if there is a substantial risk of violence or sexual abuse against that specific visitor.

This bill would also provide that a visit may be denied or restricted based on the following conduct that occurs during a visit:

- Bringing contraband into the visiting area.
- Engaging in sexual conduct with a minor.
- Engaging in sexual conduct with adults outside of a family visit.
- Committing physical violence during a visit or the visitor screening process.
- Escaping, aiding an escape, or attempting to escape or aid an escape.

Additionally, this bill would allow CDCR to deny a visitor visiting access per reasonable uniformly enforced regulations related to identification, dress, intoxication, search procedures.

Finally, this bill would prohibit an incarcerated person from being required to withhold consent to a visit as a disciplinary sanction, as a means of avoiding a disciplinary sanction, or as a condition of participating in programming or enjoying any privilege while incarcerated.

7) **AB 990 (Santiago) Veto Message**: AB 990 (Santiago), of the 2021-2022 Legislative Session, was substantially similar to this bill. In vetoing AB 990, the Governor stated:

> My Administration has made it a priority to reform our state's rehabilitation processes, including visitation rights. In fact, this year's budget added a third day of weekly in-person visitation at all CDCR institutions and included funding to provide visitors with free transportation on select days throughout the

> year to all prisons. While I am in strong support of expanding and increasing visitation opportunities, the heightened standard in this legislation is likely to result in extensive and costly litigation from individuals denied visitation for what may be valid and serious safety and security concerns. I urge the author to work with CDCR to find a solution that expands access to visitation in a manner that protects all parties.

Like AB 990, this bill includes a heightened standard, which, according to Riverside Sheriffs' Association in opposition to the bill, could result "in costly litigation even where a court finds that a good faith-based, but subsequently determined to be an impermissible denial of a visit."

8) **Argument in Support**: According to *Communities United for Restorative Youth Justice* (CURYJ), "The United States Supreme Court has recognized a constitutional right to maintain parent-child relationships absent a compelling government interest, such as protecting a child from an unfit parent. (*Santosky v. Kramer* (1982) 455 U.S. 745, 753). The United States Court of Appeals for the Ninth Circuit has recognized that this constitutional right logically encompasses a right to maintain a relationship with a life partner. (*United States v. Wolf Child* (2012) 699 F.3d 1082, 1091).

"In 2020, CDCR's budget proposal recognized that 'high quality visiting programs for inmates have been proven to reduce prison violence, maintain family bonds, break the intergenerational cycle of incarceration and smooth the reentry process, thereby reducing recidivism rates.'

"In 2009, the California Legislature passed Senate Concurrent Resolution 20, which endorsed the San Francisco Children of Incarcerated Parents Partnership Bill of Rights for state prisons, including the right to a lifelong relationship with one's parents and the right to speak with, see, and touch one's parents at visits.

"Minimum prison standards of the American Bar Association and United Nations similarly require regular access to visits and communication with friends and family members. Regular visits are critical to the mental health of incarcerated people, affecting their conduct in custody and their successful reentry once released.

"As early as January 1972, a study by the California Department of Corrections Research Division identified its 'central finding' as 'the discovery of a strong and consistently positive relationship between parole success and the maintenance of strong family ties while in prison. . . .evidence suggests that the inmate's family should be viewed as the prime treatment agent and family contacts as a major correctional technique.' [...]

"Research shows that visits and family programming reduce disciplinary infractions, increase the chances of successful parole, and decrease recidivism rates upon release and reentry into the community. Many incarcerated people rely on their families immediately after release to overcome reentry obstacles, including unemployment, debt, and homelessness. [...]

"AB 958 would potentially save taxpayers millions of dollars. Restoring visiting as a right would strengthen family connections and create a strong support system after release. These

changes can save a significant amount of money for taxpayers by reducing recidivism (avoiding costly reincarceration), improving in-custody conduct (reducing disciplinary and security costs in prisons), and supporting healthy development of children with incarcerated parents (lowering social service spending). Strong family connections can reduce intergenerational cycles of incarceration and create healthier and safer communities throughout California."

9) **Argument in Opposition**: According to the *Riverside Sheriffs' Association*, "The regulations and policies concerning the visitation processes at correctional facilities are varied and based on a number of factors, including, facility design and staffing abilities, infrastructure issues, behavior of inmates and behavior of visitors. These issues are "reasonably related to legitimate penological interests," yet AB 958 eliminates this standard along with the decades of U.S. Supreme Court jurisprudence declaring the constitutional requirements related to imprisonment.

"Under AB 958, correctional facilities and county jails would be barred from denying a prisoner an in-person contact visit if other issues, or even emergencies, arise but which may later be determined to be unrelated to furthering 'the legitimate security interests of the government.' The bill also creates a new right to in-custody visits for inmates and visitors that will result in costly litigation even where a court finds that a good faith-based, but subsequently determined to be an impermissible denial of a visit.

"The breadth (and limits) of this new untested standard, will undoubtedly cause chaos in our facilities. Prisons and jails are not places where the 'unknown' leads to positive outcomes - for the inmates or our members."

10) **Related Legislation**:

a) AB 280 (Holden) would limit the use of segregated confinement in detention facilities in the State and require facilities to follow specified procedures related to segregated confinement. AB 280 is pending hearing in the Assembly Appropriations Committee.

b) AB 1226 (Haney) would require CDCR to place incarcerated persons in the correctional facility that is located nearest to the primary place of residence of their child to facilitate increased contact between the incarcerated person and their child. AB 1226 is pending hearing in this committee.

11) **Prior Legislation**:

a) AB 990 (Santiago), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 990 was vetoed.

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

c) SB 1139 (Kamlager) Chapter 837, Statutes of 2022, requires, among other things, emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the

incarcerated person is in a critical or more serious medical condition.

d) AB 964 (Medina), of the 2019-2020 Legislative Session, would have required all local detention facilities to offer in-person visitation. AB 964 was held on the Assembly Appropriations suspense file.

e) SB 843 (Committee on Budget), Chapter 33, Statutes of 2016, barred prohibiting incarcerated persons from family visits based solely on the fact that the incarcerated person is sentenced to life without the possibility of parole or is sentenced to life and is without a parole date.

f) SB 1157 (Mitchell), of the 2015-2016 Legislative Session, would have prohibited local correctional facilities and juvenile facilities from replacing in-person visits with video or other types of electronic visitation. SB 1157 was vetoed.

g) SCR 20, Chapter 88, Statutes of 2009, encouraged correctional facilities to distribute the Children of Incarcerated Parents Bill of Rights to children of incarcerated parents, and to use the bill of rights as a framework for analysis and determination of procedures when making decisions about services for these children.

h) AB 2133 (Goldberg), Chapter 238, Statutes of 2002, required that any amendments to regulations adopted by CDCR which may impact the visitation of incarcerated persons recognize and consider the value of visitation as a means of increasing safety in prisons, maintaining family and community connections, and preparing inmates for successful release and rehabilitation.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project (Co-Sponsor)
California Families Against Solitary Confinement (Co-Sponsor)
Communities United for Restorative Youth Justice (CURYJ) (Co-Sponsor)
Community Works (Co-Sponsor)
East Bay Family Defenders (Co-Sponsor)
Felony Murder Elimination Project (Co-Sponsor)
Initiate Justice (Co-Sponsor)
Legal Services for Prisoners With Children (Co-Sponsor)
Prison From-theinside-out INC (Co-Sponsor)
Rtime Co. (Co-Sponsor)
Sister Warriors Freedom Coalition (Co-Sponsor)
Alliance for Boys and Men of Color
Aouon Orange County
Blameless and Forever Free Ministries
California Alliance for Youth and Community Justice
California Coalition for Women Prisoners
California Families Against Solitary Confinement (CFASC)
California Families Rise
California for Safety and Justice

California Public Defenders Association (CPDA)
Californians for Safety and Justice - Timedone
Californians United for A Responsible Budget
Center on Juvenile and Criminal Justice
Community Legal Services in East Palo Alto
Disability Rights California
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
End Solitary Santa Cruz County
F.u.e.l.- Families United to End Lwop
Fair Chance Project
Family Reunification Equity & Empowerment (F.R.E.E.)
Friends Committee on Legislation of California
Grip Training Institute
Humane Prison Hospice Project
Initiate Justice Action
Jesse's Place Org
Legal Aid At Work
Los Angeles Dependency Lawyers, INC.
Milpa (motivating Individual Leadership for Public Advancement)
Pillars of The Community
Prosecutors Alliance California
Riverside All of Us or None
Root & Rebound
Rubicon Programs
Santa Cruz Barrios Unidos INC.
Secure Justice
Showing Up for Racial Justice North County San Diego
Silicon Valley De-bug
Starting Over, INC.
Team Justice
The Place4grace
Uncommon Law
Young Women's Freedom Center
Youth Forward

9 Private Individuals

Opposition

California Correctional Peace Officers Association (CCPOA)
California State Sheriffs' Association
Deputy Sheriffs' Association of Monterey County
Placer County Deputy Sheriffs' Association
Riverside Sheriffs' Association

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 977 (Rodriguez) – As Amended March 15, 2023

SUMMARY: Makes an assault or a battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or by both that fine and imprisonment. Specifically, **this bill**:

1) Makes an assault or battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, when the person committing the offense knows or reasonably should know that the victim a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or by both.

2) Redefines "nurse" for purposes of these offenses, as specified, and expands the definition to include a nurse of a hospital engaged in providing services within the emergency department.

3) Defines "healthcare worker" as "a person who, in the course and scope of employment or as a volunteer, performs duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security."

4) Redefines "emergency medical technician" as specified.

5) Allows a health facility, as specified, to post a notice in a conspicuous place in the emergency department stating substantially the following:

> "WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff. Assaults and batteries against our staff are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety."

EXISTING LAW:

1) Defines "assault" as an unlawful attempt, coupled with a present ability, to inflict a violent injury upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not exceeding $1,000, or by both. (Pen. Code, §§ 240 & 241, subd. (a).)

2) Defines "battery" as the willful and unlawful use of force or violence upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not to exceed $2,000, or by both. (Pen. Code, §§ 242 & 243, subd. (a).)

3) States that when a battery is committed upon any person and serious bodily injury is inflicted upon that person, the offense is punishable as a "wobbler" with a possible sentence of up to one year in the county jail, or for two, three, or four years in the county jail. (Pen. Code, § 243, subd. (d).)

4) Provides that any person who commits an assault upon another by any means of force likely to produce great bodily injury shall be punished by imprisonment in a county jail for up to one year, or in the state prison for two, three, or four years, or by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 245, subd. (a)(4).)

5) States that when an assault is committed against a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is member of one of the specified professions engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession), the assault is punishable by a fine of up to $2,000, or by imprisonment in a county jail not exceeding one year, or by both. (Pen. Code, § 241, subd. (c).)

6) States that when a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is member of one of the professions listed above engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession) the battery is punishable by a fine of up to $2,000, or by imprisonment in a county jail for up to one year, or by both. (Pen. Code, § 243, subd. (b).)

7) Specifies that when a battery is committed on a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is a member of one of these professions and the battery causes injury, it is punishable as a "wobbler", with a possible sentence of imprisonment in a county jail for up to one year, or by imprisonment for 16 months, or two or three years in the county jail, or by a fine of up to $2,000, or by both the fine and imprisonment. (Pen. Code, § 243, subd. (c)(1).)

8) States that any person who personally inflicts great bodily injury on any person other than an accomplice in the commission, or attempted commission, of a felony shall be punished by an additional and consecutive term of imprisonment for three years. (Pen. Code, § 12022.7, subd. (a).)

9) Defines "great bodily injury" as "a significant or substantial physical injury." (Pen. Code, § 12022.7, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As a career first responder, I experienced firsthand how the constant threat of workplace violence (WPV) creates a dangerous and volatile environment in the emergency department (ED). Healthcare workers in this field experience burnout, stress, and trauma, which affects their ability to treat patients. Studies have shown that experiencing workplace violence inside the emergency department can cause PTSD, depression, and a lower quality of professional life. Workplace violence lowers patient-physician trust and drives poor health outcomes. Unfortunately, many think workplace violence is a part of the job, and many healthcare workers may not even report WPV. However, there should be zero tolerance for verbal or physical abuse to those dedicated to improving patients' lives. One-third of emergency nurses have considered leaving due to WPV, and 85% of emergency physicians believe WPV in the ED has increased over the past five years. Two-thirds of emergency physicians have reportedly been assaulted, and one-third of those assaults have led to an injury. The COVID-19 pandemic only worsened this trend and further strained desperately needed healthcare staff.

   "There is no reason why penalties for assaulting or committing battery against an emergency healthcare worker inside an emergency department should be weaker than those working outside an emergency department. AB 977 will provide parity on crimes in and out of an ED while also sending a message to ED staff that their work is valued and their safety is our priority. This bill will also authorize EDs to post a message that assault and battery against healthcare staff is a crime—sending a message to patients that workplace violence (WPV) is unacceptable."

2) **Background**: An assault is "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." (Pen. Code, § 240.) A battery is "any willful and unlawful use of force or violence upon the person of another." (Pen. Code, § 242.) Assault is essentially attempted battery. ("Simple assault" is included in the offense of battery, and a conviction of the latter would subsume the assault. By definition one cannot commit battery without also committing a "simple" assault which is nothing more than an attempted battery. *People v. Fuller* (1975) 53 Cal. App. 3d 417.) An example of an assault would be if a person swung at another person without hitting them, whereas if the person did strike the other person, the conduct would become a battery.

   Existing laws specifically address assault and battery on physicians and nurses engaged in rendering emergency medical care outside of a hospital, clinic or other health care facility. Whereas a simple assault or battery is punishable by up to six months in jail, if a simple assault or battery is committed on a physician or nurse while outside a hospital and while rendering medical care, the perpetrator faces the possibility of an additional six months in jail, for a maximum sentence of up to one year in jail. (See Pen. Code, §§ 241, subds. (a) &(c); 243, subds. (a) & (b).)[1] In addition, if the battery on the physician or nurse rendering

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[1] For a simple assault vs. assault on a physician or nurse rendering emergency medical care outside the hospital, the fines also differ by $1,000.

emergency medical care outside of the results in any injury, the conduct can be punished either as a misdemeanor or as a felony. The permissible felony sentence is imprisonment in the county jail for 16 months, or two, or three years. (Pen. Code, § 243, subd. (c)(1).)

This bill would expand the scope of the crime of simple assault or battery (i.e. without causing injury) on physicians and nurses. The enhanced maximum six-month penalty would apply to those physicians and nurses providing services within a hospital emergency department. It would also expand the scope of coverage to all health care workers within the emergency department. Specifically, it would include employees or volunteers who perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.

Proponents of the bill argue that there is no reason to treat medical personnel outside of the hospital differently than those inside the emergency department.

While all hospital employees should be protected from workplace violence, arguably one reason to treat assaults and batteries outside the hospital differently than those occurring inside the hospital, whether it be the emergency department or elsewhere, is because the likelihood that the personnel will have the back up of security or other employees is greater within the facilities than if they are outside.

3) **Veto by Former Governor Brown**: AB 172 (Rodriguez), of the 2015-2016 Legislative Session, was identical to this bill. It was vetoed by former Governor Brown. The veto message said:

"This bill would increase from six months to one year in county jail the maximum punishment for assault or battery of a healthcare worker inside an emergency department.

"Emergency rooms are overcrowded and often chaotic. I have great respect for the work done by emergency room staff and I recognize the daunting challenges they face every day. If there were evidence that an additional six months in county jail (three months, once good-time credits are applied) would enhance the safety of these workers or serve as a deterrent, I would sign this bill. I doubt that it would do either.

"We need to find more creative ways to protect the safety of these critical workers. This bill isn't the answer."

4) **Annual Report on Violent Incidents at Hospitals:** The Division of Occupational Safety and Health (Cal/OSHA) issues an annual report on incidents of violence committed against hospital staff. (Labor Code, § 6401.8, subd. (c).) Hospitals are required to submit reports to Cal/OSHA regarding any incident involving either of the following:

(A) The use of physical force against an employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;

(B) An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury. (Cal. Code Regs., tit. 8, § 3342, subd. (g).)

According to Cal/OSHA's report covering the period starting on October 1, 2020, through September 30, 2021 (the most recent report available online), there were 10,005 incidents of violence reported by hospitals.[2] (*Workplace Violent Incidents at Hospitals: October 1, 2020 through September 20, 2021*, March 25, 2022, at pp. 2, 5, available at: https://www.dir.ca.gov/dosh/Reports/Annual-Report-WPV-Incidents-2020-2021.pdf)

5) **Other Possible Solutions**: While violence in health care settings is a continuing problem, evidence suggests that increasing the penalties for assaults and batteries on health care workers is not an effective solution.

The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (https://nij.ojp.gov/about-nij.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior. ("Five Things About Deterrence," NIJ, May 2016, available at: https://www.ojp.gov/pdffiles1/nij/247350.pdf].) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment. ("Five Things About Deterrence," *supra.*)

Lack of deterrence seems particularly likely in this scenario. When a person is seeking medical attention in an emergency room or hospital, it is often because that person is in some type of distress. As noted in an article by the Association of American Medical Colleges (AAMC) reasons for "aggression vary: patients' anger and confusion about their medical conditions and care; grief over the decline of hospitalized loved ones; frustration while trying to get attention amid staffing shortages, especially in nursing; delirium and dementia; mental health disorders; political and social issues; and gender and race discrimination." (*Threats Against Health Care Workers are Rising. Here's How Hospitals are Protecting Their Staffs*, P. Boyle, Aug. 18, 2022, https://www.aamc.org/news-insights/threats-against-health-care-workers-are-rising-heres-how-hospitals-are-protecting-their-staffs [as of March 12, 2023].) While violence is not excusable in these situation, it seems unlikely that a person in these conditions will be deterred because they face an additional length of incarceration.

The AAMC notes that hospitals are increasingly taking steps to de-escalate potentially violent circumstances. One such method is the use of de-escalation teams, comprising of

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[2] Through September of 2018, CalOSHA's reports covered the types of assaults and batteries, who was the aggressor, and where in the hospital the conduct occurred. This information is no longer provided in the annual report. Labor Code section 6401.8 only requires CalOSHA to provide the following: the total number of reports, and which specific hospitals filed reports, the outcome of any related inspection or investigation, the citations levied against a hospital based on a violent incident, and recommendations of the division on the prevention of violent incidents at hospitals.

providers trained in mental health care and de-escalation techniques. U.C. Davis employs such a team, called the Behavioral Escalation Support Team. (*AAMC article, supra.*) Some hospitals, such as Boston Medical Center are using flagging systems in their medical records to alert if a patient has been aggressive with staff in the past. Such an alert gives staff several options, such as, "maintain a greater distance than usual from the person, be particularly aware of physical or verbal cues of aggression, call security to check someone for drugs or weapons, put extra limits on the visitor's access, or place the patient in areas of the hospital where staff who specialize in de-escalation are readily available. (*Ibid.*)

This bill would allow hospitals to post signs in the emergency department advising patients and visitors that they could be prosecuted for a criminal act if they commit violence against emergency room staff. Arguably legislation is not necessary to do this. Nevertheless, it aligns with the advice of the NIJ that increasing the perception that perpetrators will be caught and punished is more of a deterrent than an increase in criminal penalties.

6) **Argument in Support**: According to *Sharp HealthCare*: "Sharp is committed to providing a safe workplace for our employees and maintains ongoing programs to prevent, mitigate, and respond to violent and assaultive behavior toward our employees. Despite these programs, healthcare workers continue to endure threats, verbal and physical assaults, including being punched, kicked and even attacked with supplies or furniture. In many situations, there is no serious legal ramifications for assailants. As a result, our employees can feel that current laws do not support them as victims.

"The physical impact of an assault is often the easiest result to identify, but the emotional and psychological distress that often follows an assault should not be ignored. The level of unpredictability of violence against healthcare workers can and does lead to heightened anxiety and result in workers leaving the healthcare profession altogether.

"AB 977 recognizes that current law fails our healthcare workers and creates additional protections for emergency department staff. This bill provides healthcare workers in the emergency department the same status and protection in the law as provided to other first responders.

"Sharp's workplace violence prevention programs are system-wide programs focused on preventing violent behavior, identifying, and addressing the causal factors of violent behavior, coordinating cross-department responses and management of violent patients, training staff on how to respond to and protect themselves in violent situations, supporting and caring for staff who have suffered an assault; and continuously evaluating and improving these safety programs."

7) **Argument in Opposition**: According to the *California Public Defenders Association*, "CPDA recognizes the problem of violence and the specific challenges it poses to healthcare facilities and healthcare workers. CPDA opposes this bill because it increases the pool of potential victims, the locations of the prohibited conduct, and the potential punishment for offenses that are largely committed by individuals in crisis.

"The World Health Organization and countless other organizations have recognized that almost all violence in hospitals occurs between staff and patients or their families. Patients are often combative, either through intoxication, stress, or mental illness. Often the families

are under a great deal of stress because of receiving bad news about their loved ones and reacting poorly to the news. This is not to say that such behavior should be excused, only that increased incarceration and fines for these individuals is not in the public interest, nor likely to be an effective deterrent to such behavior.

"AB 977 is unnecessary. Existing law covers the situations that the proposed law purports to address. While simple assault or battery is currently a misdemeanor, there is a broad spectrum of assaultive conduct that can be, and usually is, charged as felonies.

"Doctors, nurses, and other hospital health care workers have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal. Doctors, nurses, and other hospital health care workers have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal.

"CPDA members frequently work with individuals in need of medical assistance that are taken to healthcare facilities. Frequently these people are mentally ill, on drugs/medication, or the victims of violent assaults themselves. Often their distressed family members come to see or support them. If an assault or battery occurs, healthcare facilities usually have security and police close at hand to remove such individuals and safeguard healthcare workers. Punishing those either seeking medical assistance, or their loved ones, more harshly will not add to public safety or aid in the rendering of medical aid."

8) **Related Legislation**: AB 771 (Lowenthal), would increase the punishment for an assault committed by means of an administering substance. AB 771 is pending hearing in this committee.

9) **Prior Legislation**:

   a) AB 26 (Rodriguez), of the 2019-2020 Legislative Session, would have required an emergency ambulance provider to provide each emergency ambulance employee, who drives or rides in the ambulance, with body armor and safety equipment to wear during the employee's work shift. AB 26 was not heard by the Assembly Labor and Employment Committee.

   b) AB 329 (Rodriguez), of the 2019-2020 Legislative Session, when heard in the Assembly, would have created a new crime for assault on hospital property punishable by up to one year in the county jail, a fine of up to $2,000 or by both imprisonment and the fine. AB 329 was gutted and amended in the Senate to an unrelated subject matter.

   c) AB 172 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the penalties for assault and battery committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, if the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department. AB 172 was vetoed.

   d) AB 1959 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the felony state prison punishment for assault on an emergency medical technician. AB 1959

was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California College and University Police Chiefs Association
California District Attorneys Association
California Hospital Association
California State Sheriffs' Association
Dignity Health
Emergency Nurses Association, California State Council
San Diego County District Attorney's Office
Scripps Health
Sharp Healthcare

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

Analysis Prepared by: Sandy Uribe / 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 994 (Jackson) – As Amended March 16, 2023

SUMMARY: Prohibits a police department or sheriff's office from sharing a booking photo on social media unless the subject of the image is a fugitive or an imminent threat to public safety, or sharing the image is otherwise justified by a legitimate law enforcement interest. Specifically, **this bill**:

1) Expands the prohibition on the sharing of booking photos by a police department or sheriff's office, on social media, of an individual arrested on suspicion of committing a nonviolent crime, to apply to individuals arrested on suspicion of committing any crime, except as specified.

2) Requires a police department or sheriff's office sharing a booking photo of an individual on social media, to use the name and pronouns given by the individual.

3) Allows a police department or sheriff's office to include other legal names or known aliases of an individual, if using the names or aliases will assist in locating or apprehending the individual or in reducing or eliminating an imminent threat to an individual or to public safety.

4) Requires the removal of a booking photo from the department's social media page within 14 days regardless of the crime, unless the person is a fugitive or an imminent threat, or there exists a legitimate law enforcement purpose for not removing the photo.

5) Eliminates the requirement that the individual who is the subject of a social media post, or their representative, request and make a showing, as specified, in order to have their booking photo removed from a police department's or sheriff's department's social media page.

EXISTING LAW:

1) Prohibits a police department or shreiff's office from sharing, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any of the following circumstances exist:

   a) A police department or sheriff's office has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat;

b) A judge orders the release or dissemination of the suspect's image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest; or,

c) There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest. (Pen. Code, § 13665, subd. (a)(1)-(3).)

2) Requires a police department or sheriff's office that posts a booking photo on social media, of an individual arrested for a nonviolent crime to remove the booking photo from its social media page within 14 days, upon the request of the subject of the social media post or theirrepresentative, unless the person is a fugitive or an imminent threat, or there exists a legitimate law enforcement purpose for not removing the photo, as specified. (Pen. Code, § 13665, subd. (b)(1).)

3) Requires a police department or sheriff's office that shares a booking photo on social media of an individual arrested a violent felony, as specified, to remove the booking photo from its social media page within 14 days upon the request of the arrestee or their representative, if the individual or their representative demonstrates any of the following:

a) The individual's record has been sealed;

b) The individual's conviction has been dismissed, expunged, pardoned, or eradicated, as specified;

c) The individual has been issued a certificate of rehabilitation;

d) The individual was found not guilty of the crime for which they were arrested; or,

e) The individual was ultimately not charged with the crime, or the charges were dismissed. (Pen. Code, § 13665, subd. (b)(2)(A)-(E).)

4) Defines "social media" as an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations. (Pen. Code §§ 13665, subd. (c)(2) &632.01, subd. (a)(1).)

5) Provides that "social media" does not include an internet website or an electronic data system developed and administered by the police department or sheriff's office. (Pen. Code § 13665, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill brings more equality and justice to every Californian, by ensuring that no one is assumed of being guilty or being a particular gender. As we protect our due process right, so too must we protect the privacy of every Californian. True justice is fairness! Equal protection under law should also have come with

an equal protection of privacy and gender expression."

2) **Limitations on Posting Booking Photos:** Social media mug shots have been compared to a modern-day scarlet letter. They have been used as a tool for public shaming. They become a public record used by other organizations like newspapers. And they can have long term consequences because they can be revealed much later by an internet search of a person's name. (See e.g. Seidman, *Are Social Media Mugshots the New Scarlet Letter?*, Sarasota Herald Tribune, https://www.heraldtribune.com/story/news/local/sarasota/2019/10/10/seidman-are-social-media-mugshots-new-scarlet-letter/2566182007/.)

   Current law allows a police department or sheriff's office to share booking photos on social media of an individual arrested on suspicion of committing a violent crime. They can also share images of persons arrested on suspicion of committing nonviolent crimes if the person is a fugitive or an imminent threat to an individual or to public safety and releasing the image will reduce the threat or help locate the individual. This bill would prohibit a police department or sheriff's office from sharing booking photos on social media of a person arrested on suspicion of any crime, violent or nonviolent, unless the person is a fugitive or an imminent threat to an individual or to public safety and releasing the image will reduce the threat or help locate the individual.

   Current law also requires a police department or sheriff's office that shares a booking photo on its social media page to remove the image within 14 days if the subject of the social media post or their representative requests it and shows that the individual's record has been sealed; the individual's conviction has been dismissed, expunged, pardoned, or eradicated; the individual has been issued a certificate of rehabilitation; the individual was found not guilty of the crime for which they were arrested; or the individual was ultimately not charged with the crime or the charges were dismissed. This bill would require automatic removal of a booking photo on social media within 14 days unless the subject of the booking photo is a fugitive or an imminent threat to an individual or to public safety and releasing the image will reduce the threat or help locate the individual.

   Finally, this bill would require a police department or sheriff's office that shares a booking photo on social media to use the name and pronouns given by the subject of the booking photo. However, if the individual is a fugitive or an imminent threat to an individual or to public safety and releasing the image will reduce the threat or help locate the individual, a police department or sheriff's office would be authorized to include other known alias or names used by the subject of the booking photo.

3) **Argument in Support**: According to *Oakland Privacy*, "Assembly Bill 994 builds upon and expands protections already enacted by the Legislature in 2022 in AB 1475, which passed the Assembly floor 74-0, and the Senate floor 39-0.

   "Assemblymember Low's legislation was brought about by several municipal scandals, when law enforcement agencies chose to post mugshots to their social media accounts of individuals who had been charged with crimes, but not convicted. These mugshots ended up shared many, many times and caused reputational damage despite charges that were later dropped. Because of the nature of social media, the images remained in circulation long after the events transpired. Such pictures floating around can have downstream consequences for

the people posted when seeking employment and housing for years to come, which is especially egregious when the mugshot is related to First Amendment protected activity and/or when charges are later dismissed.

"The events that transpired in Berkeley, California are a particularly instructive example and one which received national attention. In August of 2018, 'free speech protests' came to the university town and protesters and counterprotesters squared off in the city's Civic Center Park. The counterprotesters were characterized by the Berkeley Police Department as 'anti-fa' or antifascistic protesters who believed they were responding to a white-supremacist oriented attack on the city which has been famously liberal over the years in its politics. After some street scuffles, a number of counterprotesters were hit with charges that were never actually pursued and had their arrest images posted on the Berkeley Police Department's Twitter account. Police department emails later secured by Berkeley Copwatch and the Lucy Parsons Lab in Chicago showed that the stated intent of the postings was to create a 'counter narrative'. The emails further revealed that the police department had internally celebrated the number of retweets the postings had received. Arrest photos of 20 people were retweeted more than 8,000 times.

"The department policy of posting mugshots to their Twitter account was restricted to events characterized as protests. While at the time of arrest, charges such as weapons and assault were offered up, it was later revealed that the weapons in question were scarves, bandanas and protest signs and that no significant injuries had taken place. Charges were either never filed or dismissed against all 20 people who had their arrest photos immortalized on Twitter. After a national outcry4, the local City Council moved to end the policy and AB 1475 followed.

"Assembly Bill 994 strengthens the work done in AB 1475 in three specific ways.

"Firstly, it erases the distinction between being charged with a nonviolent crime and being charged with a violent crime for the purposes of the protections offered in the bill. This is a correct identification that initial charges in first amendment-related events are often overstated and can be punitive in nature and in many cases are rapidly dropped or dismissed. The bill removes an incentive for overcharging in order to retain the ability to post a mugshot. AB 994 correctly links the available exemption to what matters: whether or not there is a clear public interest in posting the mugshot due to an imminent threat to the public that could be alleviated by posting the mugshot. There is no other public interest in posting a mugshot on social media.

"Secondly, AB 994 states that if it is found necessary to post a mugshot on social media, it is the responsibility of the posting entity to use the correct pronouns for the individual and not to deadname them.

"This is an important protection for people in transition, who may have different levels of openness in different sectors of their lives about their gender assignment at birth and avoids unanticipated collateral damage from a posted mugshot that can endure long beyond the particular arrest in question.

"Thirdly, AB 994 restricts the posting period to a maximum of 14 days and removes the impetus for removal from the individual whose mugshot was posted. Under AB 994, people

whose mugshots were posted do not have the burden of specifically requesting a takedown. Instead, it happens by default after a maximum of 14 days."

4) **Argument in Opposition**: According to the *California Law Enforcement Association of Records Supervisors* (CLEARS), "The law being amended by this bill was only created in 2021 and didn't take effect until last year. AB 994 seeks a significant expansion of a law that was negotiated to address many of the concerns that were raised during the debate. This bill rejects the limitation that was included in current law to keep the bill's reach to nonviolent crimes. The ability to post booking photos, while being restricted, left the door open for government to balance privacy considerations and the interest in communicating with the public about those who are accused of committing serious and violent crimes. AB 994 would prevent the posting of booking photos of a person arrested for a violent crime unless very specific and limited conditions exist."

5) **Prior Legislation**:

   a) AB 1475 (Low), Chapter 126, Statutes of 2021, limits a police department and sheriff's department from sharing mug shots on social media.

   b) SB 1027 (Hill), Chapter 194, Statutes of 2014, prohibited a person or private entity from soliciting or accepting a fee to remove, correct, or modify a booking photograph.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)
Oakland Privacy

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Law Enforcement Association of Records Supervisors (CLEARS)
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' Association
Pomona Police Officers' Association
Riverside Police Officers Association

Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Analysis Prepared by: Andrew Ironside / 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 997 (Gipson) – As Amended March 16, 2023

SUMMARY: Requires the California Victim Compensation Board (the Board) to reimburse an exonerated person for mental health services related to their incarceration. Specifically, **this bill**:

1) Requires the Board to reimburse an exonerated person, or provide direct payment to their provider, for mental health services reasonably related to their incarceration.

2) States that if a person was incarcerated for eight or more years, the Board shall reimburse the person for services for no less than two years.

3) Prohibits reimbursement for services for a period of time exceeding the amount of time the person was incarcerated.

4) Requires the Board to provide individual payment or reimbursement no more than 30 days after a claim is submitted.

5) Excludes mental health services already reimbursed by CDCR for specified exonerated persons from these provisions.

6) Defines "Exonerated person" as any person whose claim for wrongful conviction compensation is approved by the Board.

7) Provide that these provisions are subject to appropriation by the Legislature.

EXISTING LAW:

1) Requires CDCR to assist a person who is exonerated as to a conviction for which the person is serving a state prison sentence at the time of exoneration with transitional services, including among other things, mental health services. The services shall be offered within the first week of an individual's exoneration and again within the first 30 days of exoneration. Services shall be provided for a period of not less than six months and not more than one year from the date of release unless the exonerated person qualifies for services beyond one year, as specified. (Pen. Code, § 3007.05, subd. (h).)

2) Provides that each person who is exonerated shall be paid $1,000 upon their release from incarceration from funds to be made available upon appropriation by the Legislature. This amount is in addition to any other payment to which the exonerated person is entitled to by law. (Pen. Code, § 3007.05, subd. (i).)

3) Defines "exonerated" as a person who has been convicted and subsequently either of the following occurred:

   a) A writ of habeas corpus concerning the person was granted on the basis that the evidence unerringly points to innocence, or the person's conviction was reversed on appeal on the basis of insufficient evidence;

   b) A writ of habeas corpus concerning the person was granted, either resulting in dismissal of the criminal charges or following a determination that the person is entitled to release on their own recognizance , or to bail pending retrial or pending appeal; or,

   c) The person was given an absolute pardon by the governor on the basis that the person was innocent. (Pen. Code, § 3007.05, subd. (i).)

4) Requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (Pen. Code, § 851.86.)

5) States that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the Board. Upon application the Board shall, without a hearing, recommend to the Legislature that an appropriation be made. (Pen. Code, § 851.865.)

6) Allows any person convicted of a felony and imprisoned in the state prison or incarcerated in county jail for that conviction, that is granted a pardon by the Governor because the crime was not committed or, if committed, was not committed by the person, and who served the term or any part thereof in state prison or county jail, to present a claim against the state to the Board for the erroneous conviction and imprisonment or incarceration. (Pen. Code, § 4900.)

7) Requires a claim to be presented by the claimant to the Board within a period of 10 years after judgment of acquittal, dismissal of charges, pardon, or release from custody, whichever is later. (Pen. Code, § 4901.)

8) Requires the Board to approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature. The amount of the payment is $140 per day of incarceration served, and any time spent in custody, including in a county jail, is considered to be part of the term of incarceration. (Pen. Code, § 4904.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 997 is a piece of good legislation that provides restitution to a small population of Californians who have been wrongfully convicted. These exonerees have lost valuable years of their lives that can never be given back. Mental health services are essential in helping heal the scars on oneself while being

incarcerated."

2) **Wrongful Conviction Compensation**: The Board processes claims from persons seeking compensation for their erroneous convictions. (Pen. Code, §§ 4900-406.) A successful claim results in a recommendation to the Legislature to appropriate compensation in the amount of $140 per day of incarceration in a state prison or county jail. (Pen. Code, §4904.) To be eligible, the claimant must have been convicted of a felony and the claimant must timely submit a claim within 10 years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (California Victim Compensation Board, *Claims for Erroneously Convicted Persons* <https://victims.ca.gov/legal/pc4900/> [as of March 10, 2023].)

3) **Current Mental Health Services for Exonerees:** Existing law requires CDCR to provide some transitional services for exonerees, including mental health services. (Pen. Code, § 3007.05, subd. (h).) However, CDCR must only provide transitional services, including mental health services, for a minimum of six months and a maximum of one year from the date of release, unless the person otherwise qualifies for services beyond one year. (*Ibid.*) In addition, these services are only offered to persons who are exonerated as to a conviction for which they are serving a state prison sentence; no such relief is afforded to persons who are exonerated as to a conviction for which they are serving a sentence in county jail pursuant to realignment.

   This bill would specify that the mental health services related to a person's wrongful incarceration, except those that are already reimbursed by CDCR, are reimbursable by the Board.

4) **Argument in Support**: According to the *California Public Defenders Association* (CPDA), "CPDA members represent those who have been wrongfully accused and convicted. We have witnessed our clients try and restore their life back to some semblance of normalcy following a wrongful conviction. Obtaining employment and securing housing are daunting enough without dealing with the lingering trauma of being wrongfully convicted and incarcerated. It is important for individuals to receive mental health treatment for that trauma. Access to mental health services promotes public safety.

   "Victims of wrongful conviction and incarceration should not be burdened with the additional expense of paying for mental health treatment. AB 997 is an attempt to rectify the harms of wrongful conviction and incarceration. While the time lost serving a sentence following a wrongful conviction can never be recouped, attempting to make the wronged individual whole is the least the State can do."

5) **Related Legislation**: SB 530 (Bradford), would delete the requirement that the claimant for wrongful conviction compensation show they have sustained an injury through their erroneous conviction and imprisonment. SB 530 is pending hearing in Senate Public Safety Committee.

6) **Prior Legislation**:

   a) AB 701 (Weber), Chapter 435, Statutes of 2019, requires payment of $5,000 to an exonerated person, upon release, for housing and entitles the person to receive direct

payment or reimbursement for reasonable housing costs, including, among others, rent and hotel costs for a period of not more than 4 years.

b) AB 702 (Weber), of the 2019-2020 Legislative Session, would have required the Board to provide reimbursement from the fund to any exonerated individual, as defined, for mental health services, as specified. AB 702 was held in Assembly Appropriations Committee.

c) AB 703 (Weber), Chapter 463, Statutes of 2019, prohibits the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the Regents of the University of California from collecting mandatory tuition and fees from exonerated persons.

d) SB 1050 (Lara), Chapter 979, Statutes of 2018, expanded transitional services for exonerated persons, and requires exonerated persons to be paid $1,000 upon release from incarceration.

e) AB 672 (Jones-Sawyer), Chapter 403, Statutes of 2015, requires CDCR to provide transitional services to exonerated persons upon their release.

f) AB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons exonerated after being wrongfully convicted and imprisoned.

REGISTERED SUPPORT / OPPOSITION:

Support

California for Safety and Justice
California Public Defenders Association (CPDA)

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / 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 1047 (Maienschein) – As Introduced February 15, 2023

SUMMARY: Requires the Department of Justice (DOJ) to create a website where a California resident can add their name to a registry and provide the email addresses of five people who will be notified if the registrant attempts to purchase a firearm. Specifically, **this bill**:

1) Requires the DOJ to develop and maintain a website where California residents can place themselves on a registry to notify friends and family members if the person attempts to purchase a firearm.

2) Requires that the registrant provide up to five email addresses when signing up.

3) States that if a registrant attempts to purchase a firearm, the DOJ must send a notification email during the 10-day waiting period to the email addresses provided.

4) Mandates that the DOJ ensure the website is easy to find, credibly verifies the identity of the resident registering or requesting removal, and prevents unauthorized disclosure of the registrant.

5) Requires the DOJ to provide the following information in the notification email:

   a) That the registrant is in the process of purchasing a firearm;

   b) That the registrant voluntarily added their name so the recipient of the email would be notified; and,

   c) That the registry's purpose is so a third party will possibly intervene and prevent the registrant from going through with the purchase.

6) States that if the registrant requests to have their name removed from the registry, the DOJ must do so within 10 days and must also notify the email addresses previously provided by the registrant.

7) Protects the confidentiality of a registrant and prohibits disclosure except as authorized by law.

8) States that it is unlawful for a person or entity to:

   a) Unlawfully obtain access to the website;

   b) Disclose the fact that the registrant is on the list; or,

c) Take any adverse action against the registrant based on their participation in the registry, including for actions relate to health care, employment, education, housing, insurance benefits, and contracting. Exempts the immunity from liability law regarding psychotherapists.

9) Makes disclosure or adverse action lawful with the registrant's consent, or if such disclosure or adverse action was pursuant to a good faith belief that not doing so would constitute an undue risk to public safety.

EXISTING LAW:

1) Prohibits persons who knows or has reasonable cause to believe that a person is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500, 30306; & Welf. & Inst. Code, § 8101.)

2) Provides that persons convicted of felonies and certain violent misdemeanors are prohibited from owning or possessing a firearm. (Pen. Code, §§ 29800 & 29805.)

3) Prohibits a person that is subject to specified restraining orders from possessing or owning a firearm. (Pen. Code, § 29825.)

4) Prohibits a person from owning a firearm for up to a lifetime period based on certain mental-health related behavior such as being placed under a conservatorship, being found mentally incompetent to stand trial, being found not guilty by reason of insanity, or being placed in a "5150" or related hold. (Welf. & Inst. Code, § 8103.)

5) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, §§ 28200 *et seq.*)

6) Prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. Peace officers, among other specified persons, are exempted. (Pen. Code, §§ 26815; 26950 *et seq.*)

7) Requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer to provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. A copy of the dealer's record of safe (DROS), containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, & 28215.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While California has been a national leader in our gun violence prevention efforts, there are still far too many people dying from gun violence- especially by suicides involving a firearm. A study by the New England Journal of Medicine found the risk of suicide by firearm among handgun owners peaked immediately after the first acquisition of a firearm showing that individuals can be seeking to purchase handguns during a time of personal crisis. AB 1047 will give individuals an opportunity to voluntarily request to have their designated friends or family alerted in the event they attempt to purchase a firearm. This notification will enable loved ones to check in with each other, seek help or treatment for their loved one in crisis, and hopefully prevent tragedy."

2) **Suicide and Firearms:** According to researchers, there is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with an increased risk of suicide. Suicide attempts that involve the use of a gun are more likely to result in death. The risk of suicide by guns is far higher in states with high rates of gun ownership than in those with low ownership rates. The increased risk of suicide applies not only to the gun owner but to others living in a household with guns. (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3518361/)

   Fifty-two percent of gun deaths in California are suicides, which accounts for roughly 1,500 gun violence deaths each year. This is the 44th-higest rate in the nation. On average, more Californians die every year from suicide by firearm than from homicide by firearm. (https://maps.everytownresearch.org/wp-content/uploads/2020/04/Every-State-Fact-Sheet-2.0-042720-California.pdf)

3) **Firearm Notification Registry & Responsibility**: Law Professor Frederick Vars wrote an article entitled "Self Defense Against Gun Violence" in October 2015 about the potential policy benefits of providing individuals an opportunity to voluntarily add their own name to the list of those already prohibited from purchasing a firearm. (Vars, *Self-Defense Against Gun Suicide*, 56 B.C.L.Rev. 1465, 1469-71) AB 29 (Gabriel), which was recently heard in this committee, primarily implemented a "Do Not Sell List." Among other things, AB 29 prevented persons who added themselves on the "Do Not Sell List" from being able to legally purchase a firearm. AB 29 also includes a provision allowing a registrant to provide email addresses of individuals who would be notified by the DOJ that the registrant added themselves onto the "Do Not Sell List."

   This bill takes the idea of creating a registry for individuals who are worried about what they may do if they purchase a firearm, however, it does not prevent a person from legally purchasing a firearm. Instead, this bill would act as a notification system only. This bill would essentially require the DOJ to inform those on the email list that the registrant provided their information, that the registrant is in the process of purchasing a firearm, and that the purpose of the registry is for a third party to potentially intervene and prevent the registrant from purchasing the firearm.

   One question is what kind of position does it leave the recipient of the notification in? When it comes to AB 29, the moral responsibility placed on the email recipient of knowing that the registrant is, for some reason or another, worried about what they may do with a firearm, is somewhat tempered by the fact that the registrant is prevented from purchasing a firearm through legal means.

This bill presents a more problematic situation. Not only is the registrant allowed to legally purchase a firearm, they are actually in the process of doing so, as the email notice is triggered by the background check, and will be sent during the 10-day waiting period to purchase the firearm. What is the email recipient supposed to do? What if they confront the registrant and the registrant, who unfortunately may be going through a difficult period, becomes hostile? Could the email recipient be put in danger? Should the email addressee tell someone else? If so, then they might be in violation of the law because this bill makes it unlawful to disclose the fact that the registrant is on the registry unless the registrant consents to disclosure, or if the disclosure was pursuant to a good faith belief that there would be "an undue risk to public safety or to the safety of the registrant." Assuming the email recipient was aware of this prohibition, what factors should they take into consideration to determine what constitutes an undue risk to public safety or the safety of the registrant?

Furthermore, although this bill presumes that family and friends would be on the list provided by the registrant, there are no sections that provide a credible means of ensuring that. What does an email addressee who may barely know the registrant do? In the case of employers who may be listed by the registrant, things become even more complicated. This bill makes it unlawful for any person or entity to take adverse action against a registrant, including actions related to employment. However, would civil liability become an issue for the employer if no action was taken, and the registrant later commits a violent act at the worksite with the firearm they purchased?

Under general principles of tort liability the "'the person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another' from that peril." (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214. [quoting *Williams v. State of California* (1983) 34 Cal.3d 18, 23].) However, the no-duty-to-protect rule is not absolute and individuals may have an affirmative duty to protect others from harm at the hands of a third party, even though the risk of harm is not of their own making. (*Id.* at 215.) Relationships between parents and children, colleges and students, innkeepers and guests, as well as employers and employees are all examples of special relationships that give rise to an affirmative duty to protect. (*Id.* at 216.) Considerations in determining whether one individual is liable to another for the actions of a third party include the foreseeability of harm and the moral blame attached to the individual's conduct. (*Id.* at 217.)

Under this bill, an employer who is listed by the registrant as a person to receive email notification might have to carefully balance taking adverse action against the registrant, which is only allowed if the employer correctly determines that there is an undue risk to public safety, with the prospect of not doing anything, which may leave them subject to tort liability.

Although this bill's intent is laudable and touches on a very serious subject, should the DOJ help facilitate putting individuals in such positions?

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

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

6) **Related Legislation**: AB 29 (Gabriel), would require the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. Also authorizes California residents to voluntarily list up to five electronic email addresses with the registry to be notified that the person has voluntarily added their name to the registry or that the person requested that their name be removed from the registry. AB 29 is currently pending hearing in the Assembly Health Committee.

7) **Prior Legislation**: AB 1927 (Bonta), of the 2017-2018 Legislative Session, would have required the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their name to the California Do Not Sell List for firearms, which would have prohibited an individual from purchasing a firearm. The governor vetoed a substantially amended version of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

None.

Opposition

None.

Analysis Prepared by: Mureed Rasool / 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 1064 (Low) – As Amended March 14, 2023

As Proposed to be Amended in Committee

SUMMARY: Defines "bias" for the purposes of hate crimes, as specified. Specifically, **this bill**:

1) Redefines "Hate crime" as a criminal act that is motivated in whole or in part by a bias against one or more actual or perceived characteristics of the victim.

2) Defines "Bias against" as a negative attitude toward specified actual or perceived characteristics of the victim.

3) Provides that, depending on the circumstances of each case, evidence of bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game, or the selective targeting of victims because of an actual or perceived characteristic of the victim.

EXISTING LAW:

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

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

   e) Religion;

   f) Sexual orientation; and,

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

2) Defines "Association with a person or group with one or more of these actual or perceived characteristics" as advocacy for, identification with, or being on the premises owned or rented by, or adjacent to, any of the following: a community center, educational facility,

family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of the characteristics listed in the definition of "hate crime." (Pen. Code, § 422.56, subd. (a).)

3) Defines "Disability" as mental disability and physical disability, as specified, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness. (Pen. Code, § 422.56, subd. (b).)

4) Defines "Gender" as sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior regardless of whether it is stereotypically associated with the person's assigned sex at birth. (Pen. Code, § 422.56, subd. (c).)

5) Specifies that "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. (Pen. Code, § 422.56, subd. (d).)

6) Defines "Nationality" as country of origin, immigration status, including citizenship, and national origin. (Pen. Code, § 422.56, subd. (e).)

7) Defines "Race or ethnicity" as ancestry, color, and ethnic background. (Pen. Code, § 422.56, subd. (f).)

8) Defines "Religion" as all aspects of religious belief, observance, and practice and includes agnosticism and atheism. (Pen. Code, § 422.56, subd. (g).)

9) Defines "Sexual orientation" as heterosexuality, homosexuality, or bisexuality. (Pen. Code, § 422.56, subd. (h).)

10) Specifies that "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense. (Pen. Code, § 422.56, subd. (i).)

11) Requires all state and local agencies to use the above listed definitions, except as any other explicit provision of state or federal law may otherwise require. (Pen. Code, § 422.9.)

12) Allows local law enforcement agencies to adopt a hate crimes policy, which must include the above listed definitions and other specified procedures. (Pen. Code, § 422.87, subd. (a).)

13) Provides that, if a local law enforcement agency adopts a hate crimes polity, the policy must include, among other things, information regarding bias motivation. "Bias motivation", for this purpose, is defined as "a preexisting negative attitude toward actual or perceived characteristics," as specified, "depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, discriminatory selection of victims, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking,

desire for social dominance, desire for social bonding with those of one's 'own kind,' or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender." (Pen. Code, § 422.87, subd. (a)(3)(B).)

14) Specifies "hate crimes" include, but are not limited to violating or interfering with the exercise of civil rights, or knowingly defacing, destroying, or damaging property because of actual or perceived characteristics of the victim that fit the "hate crime definition." (Pen. Code, §§ 422.55, subd. (b). & 422.6, subd. (a) & (b).)

15) Provides that any person convicted for violating or interfering with the civil rights of another on the basis of actual or perceived characteristics of the victim that fit the hate crime definition shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed $5000, or by both imprisonment and fine. The court shall also order community service, not to exceed 400 hours. (Pen. Code, §, 422.6, subd. (c).)

16) Provides that any hate crime that is not made punishable by imprisonment in the state prison, shall be punishable by imprisonment in a county jail not to exceed one year, or by imprisonment in the county jail for 16 months, two, or three years , or by a fine not to exceed $10,000, or by both. (Pen. Code, § 422.7.)

17) Provides that a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion, except as specified. (Pen. Code, § 422.75, subd. (a).)

18) Provides that any person who commits a felony that is a hate crime, or attempts to commit a felony that is a hate crime, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion, except as specified. (Pen. Code, § 422.75, subd. (b).)

19) Provides that, for the purpose of imposing an additional term, it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. (Pen. Code, § 422.75, subd. (c).)

20) Provides that a person who commits a felony hate crime or attempts to commit a felony hate crime, as specified, shall also receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was a hate crime. (Pen. Code, § 422.75, subd. (d).)

21) States that the fact that a person committed a felony or attempted to commit a felony that is a hate crime shall be considered an aggravating circumstance, except as specified. (Pen. Code, § 422.76.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Since the pandemic, we have seen a rise in attacks rooted in racism and xenophobia against the AAPI community in California and throughout the country. Members of my community are living in fear because they know a family member or a friend who has been bullied or attacked for being Asian. There is no excuse for hate. As Chair of the Asian Pacific Legislative Caucus, I am proud to author this bill to protect my community from these targeted hate crimes."

2) **Prevalence of Hate Crimes**: Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the Department of Justice (DOJ) reported hate crime events increased 31.0% from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9%from 1,261 in 2019 to 1,563 in 2020. (DOJ, *Hate Crime in California 2020* <https://data-openjustice.doj .ca.gov/sites/default/files/2021-06/Hate%20Crime%20In%20CA%202020.pdf> [as of March 10, 2023].) According to DOJ's 2021 report on hate crimes, "hate crime events" reported to law enforcement "increased 32.6% from 1,330 in 2020 to 1,763 in 2021," and "hate crime offense increased 42.1% from 1,563 in 2020 to 2,221 in 2021." (DOJ, *Hate Crime in California 2021* <https://oag.ca.gov/system/files/attachments/press-docs/Hate Crime In CA 2021 FINAL.pdf> [as of Mar. 10, 2023].) Specifically, the DOJ found that "[v]iolent [hate] crime offenses increased 47.4%from 1,088 in 2020 to 1,604 in 2021." (*Ibid.*)

3) **Toll of Hate Crimes on Victims**: Hate crimes severely impact victims. The emotional effect can be significant, with victims experiencing "more psychological distress than victims of other violent crimes." (*Id.* at p. 11.) Experts have observed that "[e]xperiences of hate are associated with poor emotional well-being such as feelings of anger, shame, and fear. Moreover, victims tend to experience poor mental health, including depression, anxiety, posttraumatic stress, and suicidal behavior." (Cramer et al., *Hate-Motivated Behavior: Impacts, Risk Factors, and Interventions*, Health Affairs (Nov. 9, 2020) <https://www.healthaffairs.org/do/10.1377/hpb20200929.601434/> [as of March 10, 2023].) The physical health of victims also suffers. The "impacts include poor overall physical health, physical injury, stress, and difficulty accessing medical care." (Cramer et al., *supra.*)

   Hate crimes also impact the victim's community. According to the California State Auditor, "[T]hese crimes likely had a significant impact on the groups to which victims belonged… [by] communicat[ing] to members of the victims' groups that they are unwelcome and unsafe in their communities." (California State Auditor, *supra*, at p. 11; see e.g., Brown et al., *How hate crime affects a whole community*, BBC (Jan. 12, 2018) <https://www.bbc.com/news/uk-42622767> [last visited Mar. 10, 2023].) Indeed, "Entire communities can feel the impacts of victimization. Members of the targeted community may experience vicarious trauma symptoms resulting from witnessing others being victimized. In addition, a review of structural discrimination shows that for a targeted vulnerable group, long-standing, systemic inequalities can be seen in economic, housing, and educational disparities." (Cramer et al., *supra.*)

4) **Definition of "Bias Motivation" for Local Law Enforcement Hate Crime Policies**: Penal Code section 422.87 allows all local law enforcement agencies to adopt hate crime policies. For any local law enforcement agency that chooses to adopt a hate crime policy, the policy must include specified information, including among other things, "information regarding bias motivation." (Pen. Code, § 422.87, subd. (a).)

Penal Code section 422.87 defines "bias motivation" for the purposes of law enforcement hate crime policies. Specifically, Section 422.87 defines "bias motivation" as "a preexisting negative attitude toward actual or perceived characteristics," as specified, "depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, discriminatory selection of victims, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender."

This bill would correspondingly define "bias motivation" for the purposes of prosecuting hate crimes as "a negative attitude toward actual or perceived characteristics of a person the victim," as defined, and provides that evidence of bias motivation, can include, but is not limited to, depending on the circumstances of each case, "hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game, or the selective targeting of victims because of an actual or perceived characteristic of the victim."

5) **Need for this Bill**: Penal Code Sections 422.55, 422.6, 422.7, and 422.75 make it a criminal offense for a person to commit a hate crime and impose enhanced penalties when a person commits an offense while motivated by a bias towards the victim.

   To convict a defendant for a hate crime, prosecutors must prove that the defendant acted in whole or in part because of the actual or perceived characteristic of the victim. To prove this, the prosecutor must show both that, (1) the defendant was biased against the victim based on the victim's actual or perceived characteristics; and (2) that the bias motivation caused the defendant to commit the alleged acts. The bias described here must have been a substantial motivating factor of the crime. (CALCRIM No. 1354 [for felonies]; CALCRIM No. 1355 [for misdemeanors].)

   There is no definition of "bias motivation" in existing law, even though it is an element of the crime.

6) **Policy Considerations**: The definition of "bias motivation" in this bill is broad and could potentially transform crimes that are opportunistic into hate crimes with increased penalties. For example, "bias motivation," as defined in bill includes "thrill-seeking" and the "the victim being perceived as weak" because of a protected characteristic. "Thrill-seeking" could potentially be used to turn "joy riding" into a misdemeanor hate crime. Similarly, a robbery could be transformed into a hate crime, if the offender targeted the victim because they perceived the victim as a weak target. Should "thrill seeking" be removed from the bill?

7) **Argument in Support**: According to the *American Federation of State, County, and Municipal Employees* (AFSCME), *AFL-CIO*, "Since the start of the COVID-19 pandemic, AAPI community members continue to experience hate at alarming levels. Stop AAPI Hate reporting center has received 11,467 reported incidents of anti-Asian attacks and discrimination. Almost 48% of these incidents occurred here in California, and around 40% of the incidents took place in public spaces such as streets, sidewalks, roads, and parks. Also,

the rise of LGBTQ+ targeted hate crimes are also on the rise. According to the FBI Hate Crime Statistics Report, 24% or almost 1 in 4 hate crimes reported in California between 2016 and 2021 are anti-LGBTQ+ motivated while anti-Black hate crimes in California are at 28% over the same period.

"While current law provides the appropriate guidelines when it comes to prosecution of those who clearly state their intent to target an individual of a protected class, the guidelines for defining what constitutes a bias against an individual protected class is not. AB 1064 would change the definition of a hate crime to a criminal act that is motivated in whole or in part by a 'bias against' one or more of these characteristics.

"AB 1064 clarifies bias motivation to address the purposeful targeting of victims due to bias motivations and makes the prosecution of hate crimes easier for law enforcement and brings justice for their victims."

8) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "Proposed Penal Code Section 422.56(b) would define 'bias motivation'. This definition adds both 'discriminatory selection' which is separately defined and motivations which range from 'hatred' to 'thrill-seeking' to 'desire for social bonding with those of one's "own kind"' to 'the victim being perceived as weak, worthless, or fair game because of a protected characteristic, including, not limited to, disability or gender. [...]

"A few examples, illustrate the myriad problems with this overbroad definition of 'bias motivation'.

"If the Crips, a primarily Black gang, attacked the Nortenos, a primarily Hispanic gang, using the definition of 'bias motivation' as a 'desire for social bonding with those of one's "own kind"' it could be prosecuted as a hate crime.

"Similarly, under the definition of 'the victim being perceived as weak, worthless, or fair game because of a protected characteristic, including, not limited to, disability or gender...,' almost any robbery or rape of most women could be charged as a hate crime. [...]

"CPDA stands in solidarity with the protected groups. Many of us and our clients are members of those groups. AB 1064, although well intended, would weaken the fight against bias and prejudice by potentially making every crime a hate crime."

9) **Related Legislation**:

a) AB 32 (Nguyen), would add felony hate crimes to the list of violent felonies. The hearing on AB 32 in this Committee was cancelled at the request of the author.

b) AB 644 (Jones-Sawyer), would require public postsecondary educational institutions to, among other things, develop survey questions with student participation to determine student perspectives on campus climate related to hate crimes. AB 644 is currently pending in the Higher Education Committee.

c) AB 449 (Ting), would require state and local law enforcement agencies to adopt a hate crime policy and to report to that policy to Department of Justice (DOJ), and require the

Commission on Peace Officer Standards and Training (POST) to develop a model hate crimes policy framework for use by law enforcement agencies. AB 449 is pending in Assembly Appropriations Committee.

d) SB 64 (Umberg), would authorize a search warrant to be issued on the grounds that the property or things to be seized consists of evidence that tends to show that certain misdemeanor hate crimes have occurred or are occurring. SB 64 is pending hearing in Senate Public Safety Committee.

10) **Prior Legislation**:

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Afscme
Asian Law Alliance
California Alliance for Retired Americans
California Asian Pacific American Bar Association
California Church Impact
California District Attorneys Association
California Lgbtq Health and Human Services Network
Dear Community
Equality California
Feminist Majority
Hindu American Foundation, INC.
Japanese American Citizens League - San Jose Chapter
Japanese American Citizens League, Northern California Western Nevada Pacific District Civil Rights Committee

Japanese American Citizens League, Northern California-w. Nevada-pacific District
Pathpoint
Pioneer Congregational United Church of Christ, Sacramento
Sacramento Lgbt Community Center
Santa Clara County District Attorney's Office
Stand With Asian Americans
Stand With Asians
The Arc and United Cerebral Palsy California Collaboration
The Arc of Ventura County

Opposition

California Public Defenders Association (CPDA)

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

Amended Mock-up for 2023-2024 AB-1064 (Low (A))

Mock-up based on Version Number 98 - Amended Assembly 3/14/23
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 422.55 of the Penal Code is amended to read:

422.55. For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

(a) "Hate crime" means a criminal act that is motivated in whole or in part by a bias against one or more of the following actual or perceived characteristics of the victim:

(1) Disability.

(2) Gender.

(3) Nationality.

(4) Race or ethnicity.

(5) Religion.

(6) Sexual orientation.

(7) Association with a person or group with one or more of these actual or perceived characteristics.

(b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.

SEC. 2. Section 422.56 of the Penal Code is amended to read:

422.56. For purposes of this title, the following definitions shall apply:

(a) "Association with a person or group with one or more of these actual or perceived characteristics" includes advocacy for, identification with, or being on the premises owned or rented by, or adjacent to, any of the following: a community center, educational facility, family,

individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of the characteristics listed in the definition of "hate crime" under paragraphs (1) to (6), inclusive, of subdivision (a) of Section 422.55.

~~(b) (1)~~ **(b)** A "bias against" means a negative attitude toward actual or perceived characteristics of the victim listed in the definition of "hate crime" in subdivision (a) of Section ~~422.55~~ **422.56**. Depending on the circumstances of each case, **evidence of** bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game**, or the selective targeting of victims** because of an actual or perceived characteristic of the victim.

~~(2) Evidence of bias against an actual or perceived characteristic of the victim may be determined by the actions of the person who committed a crime that include, but are not limited to, instances in which the person:~~

~~(A) Used a slur based on the actual or perceived characteristic of the victim.~~

~~(B) Vandalized property using words or symbols commonly associated with a hate group or that show bias motivation based on the actual or perceived characteristic of the victim.~~

~~(C) Selectively targeted victims based on their actual or perceived characteristic.~~

~~(D) Posted on social media or other media blaming persons with the same actual or perceived characteristic as the victim for a societal problem, including, but not limited to, causing illness, crime, or economic harm.~~

(c) "Disability" includes mental disability and physical disability, as defined in Section 12926 of the Government Code, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness. This definition is declaratory of existing law.

(d) "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior regardless of whether it is stereotypically associated with the person's assigned sex at birth.

(e) "In whole or in part by" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under In re M.S. (1995) 10 Cal.4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal.4th 735.

(f) "Nationality" means country of origin, immigration status, including citizenship, and national origin. This definition is declaratory of existing law.

(g) "Race or ethnicity" includes ancestry, color, and ethnic background.

(h) "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(i) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

(j) "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

AB 1080 (Ta) – As Introduced February 15, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the Legislative Analyst's Office (LAO) to prepare a report evaluating the results of the Criminal Justice Realignment Legislation over the previous ten years. Specifically, **this bill**:

1) States that the LAO report evaluating Realignment must include, but is not limited to, the following:

   a) The amount of funding received per county and how that funding was allocated, including but not limited to, the following categories: funding received by department or agency; all types of facilities construction; the number and type of additional personnel; rehabilitative programming; and, any other services.

   b) Information on sentencing practices, including the use of straight sentencing, split sentencing, probation, diversion, and any other alternatives to custody.

   c) The impact on the county jail population, as based on changes to the average monthly jail population, whether there were changes in jail release policies, and whether the county jail was under any court-ordered population cap.

   d) Information on post-release community supervision practices, including caseload of probation officers; responses to supervision violations, describing the sanctions used and particularly the use of flash incarceration; and programming and services offered.

   e) Recidivism outcomes, as defined by rearrest and reconviction rates after release from custody for offenders sentenced under realignment, and those released on post-release community supervision.

2) Provides that the report may be based on data from every county, or alternatively, a multi-county study using data from at least 15 counties representative of the state.

3) Establishes a submission date for the report of June 30, 2026.

EXISTING LAW:

1) Defines a "felony" as "a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under [criminal justice realignment]." (Pen. Code, § 17, subd. (a).)

2) States that the punishment for a felony not otherwise prescribed is 16 months, or two or three years in state prison, unless the offense is punishable in the county jail pursuant to realignment. (Pen. Code, § 18, subd. (a).)

3) Prohibits a term of more than one year in the county jail except for executed felony sentences under realignment. (Pen. Code, §19.2.)

4) Specifies where the defendant has a prior or current felony conviction for a serious felony, or a prior or current conviction for a violent felony, has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony or a violent felony, or is required to register as a sex offender, or is convicted of a crime and as part of the sentence a specified enhancement is imposed, an executed sentence for a felony shall be served in state prison. (Pen. Code, § 1170, subd. (h)(3).)

5) Provides that a felony not specified in the above provision shall be punishable by a term of imprisonment in the county jail. (Pen. Code, § 1170, subds. (h)(1) & (2).)

6) Provides that for purposes of county-jail eligibility, any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender, is not subject to dismissal under Penal Code section 1385. (Pen. Code, § 1170, subd. (f).)

7) Designates about 70 felonies as state-prison offenses. (See e.g., Pen. Code, §§ 86 [bribes involving member of the Legislature], 92 [bribes involving judicial officer or juror], 191.5, subd. (c)(1) [gross vehicular manslaughter while intoxicated], 266i [pandering].)

8) Requires the court to suspend execution of a concluding portion of the term of a county-jail-eligible felony sentence for a period selected at the court's discretion, unless the court finds that in the interests of justice it is not appropriate in a particular case. The suspended part of the sentence is known as mandatory supervision. (Pen. Code, § 1170, subd. (h)(5).)

9) Requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the California Department of Corrections and Rehabilitation (CDCR):

   a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);

   b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);

   c) A person serving a Three-Strikes sentence;

   d) A high risk sex offender;

   e) A mentally disordered offender;

   f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being

released; and,

g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subds. (a) & (i).)

10) Requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b), & 3451.)

11) Requires all persons paroled before October 1, 2011 to remain under the supervision of the CDCR until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09.)

12) States that the parole period for most offenders is three years, except as specified. (Pen. Code, § 3000, subd. (b).)

13) Limits the term for PRCS to three years. (Pen. Code, § 3451, subd. (a).)

14) Provides for intermediate sanctions for violating the terms of parole or PRCS, including "flash incarceration" for up to 10 days. (Pen. Code, §§ 3000.08, subd. (d) & 3454.)

15) Specifies that if parole or PRCS is revoked, the offender may be incarcerated in the county jail for a period not to exceed 180 days for each custodial sanction. (Pen. Code, §§ 3000.08, subd. (g) & 3455, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1080 will provide the Legislature with a much-needed report on the successes and shortcomings of AB 109 (Committee on Budget, 2011), also known as public safety realignment. My uncontroversial legislation would direct the Legislative Analyst's Office to prepare a comprehensive analysis of the previous years of AB 109, and would explore rehabilitation data, rehabilitation programing options, and funding and staffing for local counties. Given the lack of thorough research on realignment, AB 1080 would provide the Legislature with a proper review of this important legislation, especially as this body considers other public safety measures."

2) **Criminal Justice Realignment**: AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state prison, required that more felons serve their sentences in county jails, and affected parole supervision after release from custody. The purposes of Criminal Justice Realignment include reducing recidivism by facilitating the reintegration of low-level offenders into society, and managing incarcerated person more cost-effectively. (See Pen. Code, § 17.5, subd. (a)(5).) However, although not stated in the legislation, one of the main underlying reasons for realignment was concerns for prison overcrowding. In November 2006, plaintiffs in two class action lawsuits— *Plata v. Brown* (involving CDCR medical care) and *Coleman v. Brown* (involving CDCR mental health care)— filed motions for the courts to convene a three-judge panel pursuant to the federal Prison Litigation Reform Act.

The plaintiffs argued that persistent overcrowding in the state's prison system was preventing CDCR from delivering constitutionally adequate health care to incarcerated persons. The three-judge panel declared that overcrowding in the state's prison system was the primary reason that CDCR was unable to provide incarcerated persons with constitutionally adequate health care. In January 2010, the three-judge panel issued its final ruling ordering the State of California to reduce its prison population by approximately 50,000 individuals in the next two years. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.)

The United States Supreme Court upheld the decision of the three-judge panel, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" persons in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939.) Without changes to how the prison population was managed, the court decisions could have led to arbitrary release of tens of thousands of people in prison.

"While the state has undergone various changes to reduce overcrowding prior to the passage of the realignment legislation-including transferring inmates to out-of-state contract facilities, construction of new facilities, and various statutory changes to reduce the prison population-the realignment of adult offenders is the most significant change undertaken to reduce overcrowding." (See LAO report: *Refocusing CDCR After the 2011 Realignment*, Feb. 23, 2012, p.3, The 2012-13 Budget: Refocusing CDCR After The 2011 Realignment (ca.gov).)

To this end, realignment did two things: it changed the custodial setting where many persons convicted of a felony would serve their sentence, and it changed the repercussions for violations of supervision after release from custody.

a) *Changes to Imposition of Criminal Sentences and Incarceration*: Prior to realignment, most felony sentences were served in state prison. A felony was defined as "a crime that is punishable by death or by imprisonment in the state prison." Realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison.

   Realignment also limited which felons could be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who are sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current, or prior, serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody and which require a state prison sentence.

   Besides changing the place of incarceration for many defendants, realignment also created the option of having "split sentences," with part of the sentence being served in the county jail, and the remaining portion being served on supervised release (a.k.a. mandatory supervision). This option only applies to felonies punishable in county jail. Finally, it should be noted that the option for felony probation in appropriate cases, as well as the probation revocation process, remained unchanged.

b) *Changes to Parole As a Result of Realignment*: Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. If it was alleged that a parolee had violated a condition of parole, they would have a revocation proceeding before the Board of Parole Hearings (BPH). If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some individuals released from prison from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for persons released from prison is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a) & (c), and 3451, subd. (b).) All other individuals released from prison are subject to up to three years of PRCS under local supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

Additionally, realignment changed the process for revocation hearings. As of July 1, 2013, the trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under the jurisdiction of CDCR. Moreover, intermediate sanctions, including flash incarceration, also became available for a person on supervision. (Pen. Code, § 3000.08, subd. (d).)

Realignment also changed where an offender is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve the revocation term in county jail. (Pen. Code, §§ 3056, subd. (a), and 3458.) There is a 180-day limit to incarceration. (Pen. Code, §§ 3056, subd. (a), and 3455, subd. (c).) The only offenders who are eligible for return to prison for violating parole are life-term parolees paroled pursuant to Penal Code section 3000.1 (e.g., murderers, specific life term sex offenses).

3) **Evaluating Realignment**: There have been several reports published by the Public Policy Institute of California (PPIC) which studied the impacts of realignment. For example, PPIC produced a report evaluating the impact of Realignment after the first several years. (https://www.ppic.org/publication/public-safety-realignment-impacts-so-far/.) Subsequently, in 2017, PPIC produced a report on Realignment and Recidivism. (https://www.ppic.org/publication/realignment-and-recidivism-in-california/) In 2015, the RAND Corporation studied county responses to realignment in 12 counties. (https://www.rand.org/pubs/research_reports/RR872.html [as of March 16, 2023].) But there does not seem to be a report evaluating the longer term effects of realignment.

It is likely that we will never know for sure what those effects may have been because there have been other significant criminal justice reforms not foreseen at the time which would have affected the impact of realignment. For example, Proposition 47, passed by the voters in November 2014 that reduced low-level drug and property crimes from felonies to misdemeanors.

In addition to criminal justice reforms, there was the completely unanticipated effect of a worldwide pandemic, COVID-19. On March 24, 2020, Governor Newsom issued an executive order directing CDCR to temporarily halt the intake and/or transfer of convicted

adult offenders and youth into the state's 35 prisons and four youth correctional facilities in order to reduce the risks of COVID-19 in correctional settings. Those incarcerated individuals and youth were to remain in county custody for 30 days, with the possibility of extension. (https://www.gov.ca.gov/2020/03/24/governor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak/) Extensions of the suspension of intake did indeed happen. This of course affected jail populations because defendants who had been sentenced to prison could not be transferred. Meanwhile, both state and local correctional facilities had COVID-19 outbreaks, and released incarcerated individuals early. (See e.g. https://www.cdcr.ca.gov/covid19/frequently-asked-questions-expedited-releases/; https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus.) In addition, the Judicial Council issued a series of emergency orders which delayed arraignments, preliminary hearings, and jury trials statewide. The Judicial Council also adopted a statewide COVID-19 emergency bail schedule that set bail at $0 for most people accused–but not yet tried–of misdemeanors and lower-level felonies. These orders also affected jail populations because a significant number of the individuals held in jails are pre-trial detainees. (https://www.courts.ca.gov/43820.htm) All of these preventative measures will affect an evaluation of realignment.

Because of the pandemic, coupled with new criminal justice reforms, it may never be possible to know the true effects of criminal justice realignment. Nevertheless, it is arguably beneficial to take a long-term look at realignment policies and their effects. If nothing else, since realignment provided the counties with flexibility not only on how to treat criminal offenders but also on how to spend their funding, such a study will provide counties with a tool to learn best practices that they might adopt.

This bill would require the LAO to prepare and submit a report to the Legislature evaluating the results of criminal justice realignment over the previous 10 years, as specified.

4) **Argument in Support**: According to the *California District Attorneys Association*, "AB 109 was implemented to reduce the prison population while encouraging rehabilitative programming for offenders to reduce recidivism. Evaluating the effectiveness of statewide policies is critical to a well-functioning democracy. It opens the lines of communication on important issues and educates our communities on issues they care about. It allows us to celebrate policies and programs that are excelling, while providing an opportunity to reform programs that are not working. Such transparency is also key to building the public trust and allows community members to feel like they have an opportunity to be informed and participate in the public process.

"AB 109, in conjunction with other related policies that have followed, continue to be a source of speculation and questions within the communities we serve. Reports like this one can help answer those questions, while reaffirming that policy makers are continuously evaluating policy implications.

"As over a decade has passed since the implementation of AB 109, it is time to assess the results of the legislation both statewide and locally. This policy was the beginning of many programs implemented at the state level to reduce the state prison population, while implementing rehabilitation-driven policies. An examination of AB 109 can illuminate

program successes for our communities, and identify room for improvement."

5) **Prior Legislation**:

a) AB 1783 (Gallagher), of the 2017-2018 Legislative Session, as introduced, would have required the Board of State and Community Corrections (BSCC) to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence punishable by imprisonment in a county or who are placed on PRCS, as specified. AB 1783 was amended into an unrelated subject matter.

b) AB 152 (Gallagher) of the 2017-2018 Legislative Session, would have required, commencing July 1, 2018, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2018, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2019. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.

c) AB 1870 (Gallagher) of the 2015-16 Legislative Session, would have required, commencing July 1, 2017, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2017, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2018. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.

d) AB 602 (Gallagher), of the 2013-14 Legislative Session, would have required, commencing July 1, 2016, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2016, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2017. AB 602 was held on the Assembly Committee on Appropriations' Suspense File.

e) AB 2521 (Hagman), of the 2013-14 Legislative Session, would have required, commencing July 1, 2015, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2015, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2016. AB 2521 was held on the Senate Committee on Appropriations' Suspense File.

f) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state prison, required that more felons serve their sentences in county jails, and created PRCS.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association

California Coalition of School Safety Professionals
California District Attorneys 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
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

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

Amended Mock-up for 2023-2024 AB-1080 (Ta (A))

Mock-up based on Version Number 99 - Introduced 2/15/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Chapter 2.5 (commencing with Section 13400) is added to Title 3 of Part 4 of the Penal Code, to read:

CHAPTER 2.5. Criminal Justice Realignment Evaluation

13400. (a) The Legislative Analyst's Office shall prepare a report, to be submitted to the Legislature on ~~January 1~~ **June 30**, 2026, evaluating the results of Assembly Bill 109 of the 2011–12 Regular Session over the previous 10 years, including, but not limited to, the following:

(1) ~~Rehabilitation data for the past 10 years.~~ **The amount of funding received per county and how that funding was allocated, including, but not limited to, the following categories: funding received by department or agency; all types of facilities construction; the number and type of additional personnel; rehabilitative programming; and any other services.**

(2) ~~Funding and staffing for local counties.~~ **Information on sentencing practices, including the use of straight sentencing, split sentencing, probation, diversion, and any other alternatives to custody.**

(3) ~~Rehabilitation programming options.~~ **The impact on the county jail population, as based on changes to the average monthly jail population, whether there were changes in jail release policies, and whether the county jail was under any court-ordered population cap.**

(4) Information on post-release community supervision practices, including caseload of probation officers; responses to supervision violations, describing the sanctions used and particularly the use of flash incarceration; and programming and services offered.

(5) Recidivism outcomes, as defined by rearrest and reconviction rates after release from custody for offenders sentenced under subdivision (h) of section 1170, and those released on post-release community supervision.

(b) **The report may be based on data from every county, or alternatively, a multi-county study using data from at least 15 counties representative of the state.**

~~(b)~~ **(c)** (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this chapter is repealed on **June 30** ~~January 1~~, 2030.