California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, March 23, 2021
1:30 p.m. -- State Capitol, Room 4202

ADOPTION OF COMMITTEE RULES

REGULAR ORDER OF BUSINESS

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

TWO WITNESSES PER SIDE - FIVE MINUTES TOTAL

1.	AB 341	Boerner Horvath	Credibility of witnesses: social media content.
2.	AB 263	Bonta	Private detention facilities.(Urgency)
3.	AB 329	Bonta	Bail.
4.	AB 308	Chen	Law enforcement: vehicle burglary and theft task forces.
5.	AB 515	Chen	Trespass.
6.	AB 419	Davies	Criminal procedure: victim and witness privacy.
7.	AB 57	Gabriel	Law enforcement: hate crimes.
8.	AB 48	Lorena Gonzalez	Law enforcement: kinetic energy projectiles and chemical agents.
9.	AB 26	Holden	Peace officers: use of force.
10.	AB 331	Jones-Sawyer	Organized theft.(Urgency)
11.	AB 483	Jones-Sawyer	Peace officers: California Science Center and Exposition Park.
12.	AB 256	Kalra	Criminal procedure: discrimination.
13.	AB 18	Lackey	Sexual assault forensic evidence: testing.
14.	AB 395	Lackey	Unlawful entry of a vehicle.
15.	AB 547	McCarty	Domestic violence: victim's rights.
16.	AB 594	McCarty	Law enforcement policies.
17.	AB 253	Patterson	Animal welfare.
18.	AB 262	Patterson	Human trafficking: vacatur relief for victims.
19.	AB 228	Rodriguez	Theft: receiving stolen property: firearms.
20.	AB 409	Seyarto	Crimes: public records: disclosure of information.
21.	AB 292	Stone	Corrections: prison credits.
22.	AB 503	Stone	Wards: probation.
23.	AB 518	Wicks	Criminal law: violations punishable in multiple ways.

COVID FOOTER

SUBJECT:

We encourage the public to provide written testimony before the hearing by visiting the committee website at https://apsf.assembly.ca.gov/. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

Due to ongoing COVID-19 safety considerations, including guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at https://www.assembly.ca.gov/todaysevents.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal or phone. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building. We encourage the public to monitor the committee's website for updates.

2021-2022 COMMITTEE RULES

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

1) Setting Bills

   a) Setting: Bills referred to the Committee are set for hearing by the Chair in accordance with the Joint Rules and Assembly Rules, at a time most convenient to the Committee.

   b) Worksheet: When a bill is referred to Committee, the Committee Secretary shall forward to the author a worksheet to aid in the preparation of the Committee analysis. The Committee requests two copies of the completed worksheet and background materials are returned to the Committee for the Chair and Vice Chair staff no later than one week before the hearing. The Chair may withhold the setting of a bill until the worksheet is completed and returned to the Committee.

   c) Content: The worksheet requests specific facts or examples to demonstrate the need for the bill and an explanation of the deficiency in current law. The author shall forward to the Committee two copies of all known support and opposition. The worksheet shall include prior known legislative history.

   d) Notice: Notice of a bill's hearing by the Committee of first reference shall be published in the Assembly Daily File at least four days prior to the hearing, unless such notice is waived by a majority vote of the Assembly pursuant to Joint Rules 62(a). Otherwise notice shall be published in the daily file two days prior to the hearing.

   e) Procedure: A bill may be set for hearing only three times. A bill is "set" for the purposes of this subsection whenever notice of the hearing has been published in the Assembly Daily File for one or more days. If a bill is set for hearing and the Committee, on its own initiative and not the author's, postpones the hearing or adjourns the hearing while testimony is being taken, such hearing shall not be counted as one of the three times a bill may be set. If the hearing notice in the Assembly Daily File specifically indicates that "testimony only" will be taken, such hearing shall not be counted as one of the three times a bill may be set.

2) Amendments Prior to Hearings

   a) Substantive Amendments: Pursuant to Assembly Rules 55 and 68, an author may, subject to the Joint Rules, amend a bill at any time prior to or during the hearing; however, substantive author's amendments shall not be accepted by the Committee Secretary later than four legislative days prior to the hearing at which the bill has been set unless otherwise ordered by the Chair. As used in these rules, a "legislative day" is any day on which an Assembly Daily File is published. (Example: No substantive amendments shall be accepted after 5:00 p.m. on the Wednesday of the week prior to a

Tuesday hearing.)

b) Discretion: Pursuant to Assembly Rules 55 and 68, the Chair, in consultation with Legislative Counsel, shall have the discretion to determine whether an amendment is "substantive" within the meaning of Subsection (a) above."

c) Analyses: If an author gives advance notice to Committee staff of written amendments the author will offer in Committee, the Committee staff may, subject to the Chair's approval and if time permits, analyze the bill as the author proposes to amend the bill in Committee. Unless Committee staff has drafted the amendments, the author must have a written mockup of the amendments at the Committee hearing and provide the mockup of amendments to Committee staff for review before the morning of the hearing.

3) Committee Analysis

a) Availability: Committee staff analyses of bills scheduled for hearing shall be made available to the public at least one working day prior to the day of the hearing. In the case of special hearings, the analysis need not be made available one working day prior to the hearing, but shall be made available to the public at the time of the hearing and prior to any testimony being taken on the bill.

b) Distribution: A copy of the analysis shall be sent to the bill's author and to Committee members prior to its general distribution to the public.

4) Quorum

a) Majority: A majority (five) of the Committee members (eight) shall constitute a quorum.

b) Opening the Meeting: Subject to Committee Rule 4(c), the Committee shall not open a meeting without a quorum present. However, once a meeting has been opened, the members may continue to take testimony even in the absence of a quorum unless a Committee member objects.

c) Chair: The Chair is authorized to begin the hearing at the Committee's prescribed hearing time. In the absence of a quorum, the Chair, operating as a subcommittee, may receive testimony and recommend action on a bill to the majority of the Committee.

5) Order of Agenda

a) Committee Members: Except as otherwise determined by the Chair, Committee members shall present their bills after all other authors.

b) Sign-In Order: Bills set for hearing shall be heard in sign-in order. The Sergeants will have a sign-in sheet available for authors as they enter the hearing room. Measures can be set as a special order of business. When the Chair finds another order of business

would be more expedient, measures can be taken up out of order.

c) Consent Calendar: Bills without written opposition may be placed on a proposed consent calendar upon approval by the Chair and Vice Chair. Any Committee member has the right to remove a bill from the consent calendar before the consent calendar is taken up for a vote.

6) Testimony at Hearing

a) Testimony: The Chair directs the order of presentation of the arguments for and against matters for consideration by the Committee. The Chair shall permit questions to be asked by Committee members in an orderly fashion and in keeping with proper decorum. When appropriate, the Chair shall limit witness testimony in order to avoid redundancy or non-relevant discussion.

b) Author: An author shall have a total of five minutes to give an opening and closing statement, allocated as the author desires. The Chair has discretion to allow more time when the agenda is not lengthy or other members are not present to take up their bills.

c) Lengthy Hearings: The Chair and Vice Chair recognize the importance of public hearings and do not wish to stifle testimony at a public hearing. However, when there is a high volume of bills on calendar for hearing and considering the limited hearing time available, the Chair and Vice Chair agree that the number of witnesses for each side must be limited. For example, some Committee members sit on other committees during the afternoon following the Public Safety Committee hearing. Accordingly, the Chair may, by reason of necessity, be forced to limit the number of witnesses appearing on behalf or in opposition to a bill to two per side. Legislative advocates who do not testify may state their positions and organizations for the record.

d) Notification of Opposition: The Chair and Vice Chair encourage legislative advocates to notify the author in writing of their opposition in advance of the scheduled hearing date.

7) Voting

a) Print: Subject to Committee Rule 7(b), a vote on passage of any bill shall be made only when the bill, in the form being considered by the Committee, is in print.

b) Discretion: A vote on passage of an amended bill, when the amended form of the bill is not in print, shall be taken only if the Chair determines that the amendment can be readily understood by all Committee members and the audience present at the hearing. Any member may require that such an amendment be in writing at the time of its adoption.

c) Majority: A majority (five) of the Committee membership (eight) is required to pass a bill from the Committee. A majority of those present and voting is sufficient to adopt committee amendments, provided that a quorum is present. A call may be placed on

votes to adopt committee amendments.

d) Roll Call: A recorded roll call vote shall be taken on all of the following Committee actions:

   i) On an action which constitutes the Committee's final action on a bill, constitutional amendment or resolution.

   ii) On Committee amendments taken up in Committee, whether adopted or not.

   iii) On motions to reconsider Committee actions.

   iv) On recommendations to the Assembly Floor related to Executive Reorganization Plans.

e) Substitution: A roll call vote on a previous bill may be substituted by unanimous consent provided the members whose votes are substituted are present at the time of the substitution.

f) Motions: The Chair may determine a bill be held in committee in the absence of objection. If there is an objection, a motion to "hold in Committee" requires a second, shall be put to the Committee without discussion, and requires an affirmative vote by a majority of those present and voting of the Committee membership.

g) Call: The Chair may, at any time, order a call of the Committee. At the request of the author or at the request of any members, the Chair shall order a call.

h) Vote: On the Chair's own initiative or at the request of any member, the Chair may open the roll or may lift the call to permit any member to vote on the bill or Committee amendment and impose or re-impose the call if the bill or Committee amendment has not received a majority vote of the Committee. A member need not be present during the discussion of the bill and the Chair may open the roll at any time after it has been presented to allow the absent Committee member to add on to the roll until adjournment of the Committee meeting. When a bill has already received a majority vote, a member shall be allowed to add his or her vote to the roll prior to the adjournment of the meeting.

i) Exception: A recorded roll call vote is not required on the following actions by the Committee:

   i) A motion to hold a bill "under submission" or other procedural motion which does not have the effect of finally disposing of the bill.

   ii) An author's request to withdraw a bill from the Committee's calendar.

iii) The return of a bill to the House when the bill has not been voted upon by the Committee.

8) Reconsideration

a) Reconsider: After a bill has been voted upon, reconsideration may be granted once only. Reconsideration must be granted within 15 legislative days of the bill's defeat.

b) Requirements for Reconsideration: If reconsideration is granted, the Committee may vote on the bill immediately or may postpone the vote until the next regular hearing. If the motion for reconsideration fails, the bill shall be immediately returned to the Chief Clerk.

c) Notice: An author seeking reconsideration of a bill shall request/notify the Committee Secretary and the vote on reconsideration must be taken up within 15 legislative days of the original vote. Notice of reconsideration is the same notice required to set a bill unless that vote is taken at the same meeting at which the vote to be reconsidered was taken. A motion to reconsider a bill which passed must be made at the hearing at which the bill passed, and the author must be present in the hearing room.

9) Subcommittee

a) Study: The Speaker may create subcommittees for the in-depth study of a particular subject matter or bills. Bills may be assigned to the subcommittees as deemed proper by the Chair.

b) Rules: Subcommittees shall operate under the same rules as the full Committee. All actions recommended by subcommittees are subject to ratification and further consideration by the full committee.

10) Executive Reorganization Plans

a) Consideration: Pursuant to Government Code Section 12080.2, Executive Reorganization Plans referred to the Committee pursuant to Government Code Section 12080 shall be considered in the same manner as a bill.

b) Report: Pursuant to Government Code Section 12080.2, after consideration, and at least 10 days prior to the end of the 60-day period specified in Government Code Section 12080.5, the Committee shall forward a report to the Assembly floor which may include the Committee's recommendation on whether or not to allow the plan to take effect.

c) Plans: Pursuant to Government Code Sections 12080 and 12080.2, possible Committee actions with respect to a reorganization plan include the following:

i) Recommend that the Assembly take no action, thus permitting the plan to take effect.

ii) Recommend that the Assembly adopt a resolution disapproving of the plan and preventing it from taking effect.

iii) Make no recommendation.

11) Review of Administrative Plans

a) Staff: Committee staff may review all proposed administrative rules and regulations which are contained in the Notice Supplement of the California Administrative Register and which pertain to agencies and programs within the scope of the Committee's jurisdiction.

b) Duties: Committee staff may review each administrative rule or regulation for conformity with the enabling statute and with legislative intent. Rules or regulations which do not appear to be based on statutory authority or which do not appear to be consistent with legislative intent may be placed on the Committee's agenda for appropriate action.

12) Oversight

a) Investigation: The Speaker may create oversight subcommittees to conduct detailed investigations of the performance and effectiveness of state agencies and programs that come within the scope of the Committee's jurisdiction. Such subcommittees shall make periodic reports to the full Committee on the progress of their oversight activities.

b) Agenda: Whenever reports submitted by the Legislative Analyst or State Auditor are referred to the Committee, any legislative recommendations contained therein may be placed on the Committee's agenda for appropriate action.

13) Rule Waiver

By at least five affirmative votes, Rules 1 to 12, inclusive, may be suspended so long as the action for which the rule waiver is sought does not conflict with the Joint Rules or the Rules of the Assembly.

Date of Hearing: March 23, 2021
Counsel: Nikki Moore

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

AB 341 (Boerner Horvath) – As Introduced January 28, 2021

As Proposed to be Amended in Committee

SUMMARY: Defines evidence of "sexual conduct," to mean "includes those portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense" with respect to the application of the Rape Shield law, when impeachment evidence about sexual conduct is offered against a victim or witness.

EXISTING LAW:

1) In any of the circumstances described in subdivision (c), if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

   a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness. (Evid. Code, § 782, subd. (a)(1).)

   b) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to paragraph (3). After that determination, the affidavit shall be resealed by the court. (Evid. Code, § 782, subd. (a)(2).)

   c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant. (Evid. Code, § 782, subd. (a)(3).)

   d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court. (Evid. Code, § 782, subd. (a)(4).)

e) An affidavit resealed by the court pursuant to paragraph (2) shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding. (Evid. Code, § 782, subd. (a)(5).)

2) As used in this section, "complaining witness" means: the alleged victim of the crime charged, the prosecution of which is subject to this section; and, an alleged victim offering testimony. (Evid. Code, § 782, subd. (b)(1)-(2).)

3) Establishes the procedure for introducing specified evidence in any of the following circumstances: sexual battery, rape, unlawful sexual intercourse with a minor, spousal rape, incest, sodomy, oral copulation by force, sexual abuse of a child under 14 or a dependent person, continuous sexual abuse of a child, forcible penetration with a foreign object, indecent exposure, and annoying or molesting a minor. (Evid. Code, § 782, subd. (c)(1)-(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Victims of sexual assault should not have to relieve the trauma of their attack in a courtroom by allowing the use of their social media posts to embarrass them and purposefully shaming or discouraging them from testify against their perpetrators. AB 341 would provide additional protections under the Rape Shield Law to victims of sexual assault by requiring evidence mined from their social media accounts to first be evaluated by a judge to demonstrate relevance and admissibility before being introduced in open court to attack the victim's credibility in a sexual assault prosecution."

2) **The Rape Shield Law and Relevant Crimes:** The Rape Shield Law was passed in California in 1974. The Legislature created limitations on the introduction of evidence in specific sex-related cases to recognize that victims of sex-related offenses deserve heightened protection against "surprise, harassment, and unnecessary invasions of privacy." (*People v. Fontana* (2010) 49 Cal. 4th 351, 362-63, citing *People v. Rioz* (1984) 161 Cal.App.3d 905, 916-17.) The crimes that implicate the Rape Shield Law are: sexual battery, rape , unlawful sexual intercourse with a minor, spousal rape, incest, sodomy, oral copulation by force, sexual abuse of a child under 14 or a dependent person, continuous sexual abuse of a child, forcible penetration with a foreign object, indecent exposure, and annoying or molesting a minor.

   The Rape Shield Law generally prevents the introduction of evidence against an alleged victim about that person's prior sexual conduct in order to show that the person consented to the sexual act in question. However, impeachment evidence of an alleged victim, or a witness, that relates to sexual conduct *may* be introduced by following a procedure — filing a written motion with the court in a criminal jury trial where the judge will make a ruling on admissibility of that evidence. Other impeachment evidence intended to attack the credibility

of a witness that is not sexual in nature is not required to be vetted first by a judge.

According to the sponsors of the bill, the law needs to be clarified and updated to recognize that sexual conduct exhibited on a social media account presents the same concerns as any other type of evidence of sexual conduct. This bill defines "sexual conduct" for the purpose of the Rape Shield Law to include portions of such social media posts that are sexual in nature. This action preserves the right to submit, without a motion, any other relevant social media content that does not implicate sexual conduct. This bill is narrow so as not to impede on the introduction of relevant impeachment evidence, so that it does not run afoul of a defendant's rights under the Sixth Amendment Confrontation Clause. (U.S. Const. amend XI.)

3) **Argument in Support**: According to the *San Diego County District Attorney*, "Since then, California's Rape Shield Law has been amended several times as awareness increased and the need for further protection for survivors was recognized. The defense has challenged these laws on a variety of grounds including that the evidentiary rules violate the right to confront one's accuser and the right against self-incrimination, and that these laws are too vague. However, the courts have overwhelmingly rejected these challenges. Evidence Code section 782 currently protects sexual assault victims from being discredited due to their sexual history. The section further provides a procedure for the defense to make an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of that complaining witness. As an additional safe-guard for survivors, this motion shall be made under seal, with the court having the final say as to whether the evidence is admissible. These protections are deemed critical to protecting the survivor's reputation and credibility. Now in 2021, these protections are no longer sufficient. AB 341 requests that this Legislature update this statute in light of the exploding online socialization occurring on digital platforms.

"Social media has become ubiquitous. In sexual assault cases, defense lawyers are mining the social media accounts of sexual assault victims to discover information that can be used against the victim. Most adults now have social media history going back nearly two decades. Never before has there been such an intimate record of one's actions, words, photos and videos. And never before has there been a greater need to protect which specific evidence cherry-picked from these electronic platforms may be used against a survivor of rape in a criminal proceeding. This bill would require a procedure, similar to existing law, to determine the admissibility of the content of a sexual assault victim's social media account in a manner that protects the privacy of the victim, reducing blatant attempts to embarrass, shame or discourage a victim from testifying against the person who assaulted her.

"AB 341's proposed amendment to Evidence Code section 782 will not impact the defense access to social media evidence. It will simply require a procedure to screen admissibility when the defense seeks to admit the social media evidence to attack the survivor's credibility. At the conclusion of the hearing, if the court finds that the social media evidence proposed 'to be offered by the defendant regarding the content of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352, the court may make an order stating that evidence may be introduced by the defendant, and the nature of questions permitted.'"

4) **Prior Legislation**:

a) AB 1996 (Bogh), Chapter 225, Statutes of 2006, extended Rape Shield Law procedures that apply when the sexual history of a testifying witness is offered to attack the credibility of the witness, to witnesses testifying about prior sexual offenses of a defendant.

b) AB 2829 (Bogh), Chapter 61, Statutes of 2004 required that an affidavit in support of a motion to introduce evidence of sexual conduct of the complaining witness be filed under seal.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California (Co-Sponsor)
San Diego County District Attorney's Office (Co-Sponsor)
California District Attorneys Association
California Law Enforcement Association of Records Supervisors
California Women's Law Center
End Violence Against Women International
Peace Officers Research Association of California
County of San Diego

Opposition

None

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744

Amended Mock-up for 2021-2022 AB-341 (Boerner Horvath (A))

Mock-up based on Version Number 99 - Introduced 1/28/21
Submitted by: Nikki Moore, Assembly Public Safety Committee

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

SECTION 1. Section 782 of the Evidence Code is amended to read:

782. (a) ~~(1)~~ In any of the circumstances described in subdivision (c), evidence of sexual conduct of the complaining witness ~~the procedure specified in paragraph (2) shall be followed if either of the following types of evidence~~ is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

~~(A) Evidence of sexual conduct of the complaining witness.~~

~~(B) Content of a social media account of the complaining witness that is not a statement, image, video, or picture of the alleged offense, nor a communication about the alleged offense.~~

~~(2) (A)~~ (1)A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevance of evidence described in paragraph (1) that is proposed to be presented and of its relevance in attacking the credibility of the complaining witness.

~~(B)~~ (2)The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to ~~subparagraph (C)~~ paragraph (3). After that determination, the affidavit shall be resealed by the court.

~~(C)~~ (3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

~~(D)~~(4) At the conclusion of the hearing, if the court finds that evidence ~~described in paragraph (1) that is~~ proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

~~(E)~~(5) An affidavit resealed by the court pursuant to ~~subparagraph (B)~~ paragraph (2) shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit. The use of the information contained in the affidavit shall be limited solely to the pending proceeding.

(b) As used in this section, "complaining witness" means:

(1) The alleged victim of the crime charged, the prosecution of which is subject to this section, pursuant to paragraph (1) of subdivision (c).

(2) An alleged victim offering testimony pursuant to paragraph (2) or (3) of subdivision (c).

(c) The procedure provided by subdivision (a) shall apply in any of the following circumstances:

(1) In a prosecution under Section 261, 262, 264.1, 286, 287, 288, 288.5, or 289 of, or former Section 288a of, the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in the state prison, as defined in Section 4504.

(2) When an alleged victim testifies pursuant to subdivision (b) of Section 1101 as a victim of a crime listed in Section 243.4, 261, 261.5, 269, 285, 286, 287, 288, 288.5, 289, 314, or 647.6 of, or former Section 288a of, the Penal Code, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in the state prison, as defined in Section 4504 of the Penal Code.

(3) When an alleged victim of a sexual offense testifies pursuant to Section 1108, except if the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4 of the Penal Code, or in the state prison, as defined in Section 4504 of the Penal Code.

(c) Evidence of "sexual conduct" shall include those portions of a social media account about the complaining witness, including any text, image, video, or picture, which depict sexual content, sexual history, nudity or partial nudity, intimate sexual activity, communications about sex, sexual fantasies, and other information that appeals to a prurient interest, unless it is related to the alleged offense.

Date of Hearing: March 23, 2021
Counsel: David Billingsley

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

AB 263 (Bonta) – As Amended March 17, 2021

SUMMARY: Requires a private detention facility operator to comply with all local and state public health orders and occupational safety and health regulations. Specifically, **this bill**:

1) Specifies that a private detention facility operator shall comply with, and adhere to, all local and state public health orders and occupational safety and health regulations.

2) Defines "private detention facility operator" and "private detention facility" for purposes of this bill.

3) States that this bill shall not be construed to limit or otherwise modify the authority, powers, or duties of state or local public health officers or other officials with regard to state prisons, county jails, or other state or local correctional facilities.

EXISTING LAW:

1) Specifies that after January 1, 2020, California Department of Corrections and Rehabilitations (CDCR) shall not enter into a contract with a private, for-profit prison facility located in or outside of the state to provide housing for state prison inmates. (Pen. Code, § 5003. 1, subd. (a).)

2) States that after January 1, 2020, CDCR shall not renew an existing contract with a private, for-profit prison facility located in or outside of the state to incarcerate state prison inmates.

3) Specifies that after January 1, 2028, a state prison inmate or other person under the jurisdiction of CDCR shall not be incarcerated in a private, for-profit prison facility. (Pen. Code, § 5003. 1, subd. (b).)

4) Provides that notwithstanding the limitations on contracting with private prisons, CDCR may renew or extend a contract with a private, for-profit prison facility to provide housing for state prison inmates in order to comply with the requirements of any court-ordered population cap. (Pen. Code, § 5003. 1, subd. (d).)

5) Excludes a facility that is privately owned, but is leased and operated by CDCR from the definition of "private, for-profit prison facility" for purposes of the provisions described above. (Pen. Code, § 5003. 1, subd. (c).)

6) Prohibits a person from operating a private detention facility within California, with specified exceptions. (Pen. Code, §§ 9001-9005.)

7) Authorizes the Secretary of CDCR to enter into agreements with private entities to obtain secure housing capacity in another state. (Pen. Code, § 2915, subds. (b) & (d).)

8) Prohibits CDCR from operating its own facility outside of California. (Pen. Code, § 2915, subd. (b).)

9) Requires CDCR, to the extent that the adult offender population continues to decline, to begin reducing private in-state male contract correctional facilities in a manner that maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. The private in-state male contract correctional facilities that are primarily staffed by non-Department of Corrections and Rehabilitation personnel shall be prioritized for reduction over other in-state contract correctional facilities. (Pen. Code, § 2067, subd. (a).)

10) Requires CDCR to consider the following factors in reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities:

    a) The cost to operate at the capacity;

    b) Workforce impacts;

    c) Subpopulation and gender-specific housing needs;

    d) Long-term investment in state-owned and operated correctional facilities, including previous investments;

    e) Public safety and rehabilitation; and,

    f) The durability of the state's solution to prison overcrowding. (Pen. Code, § 2067, subd. (b).)

11) Specifies that a city, county, or local law enforcement agency that does not, as of June 15, 2017, have a contract with the federal government to detain adult noncitizens for purposes of civil immigration custody, is prohibited from entering into a contract with the federal government, detain in a locked detention facility, noncitizens for purposes of civil immigration custody. (Gov. Code, § 7310, subd. (a).)

12) States that until July 1, 2027, the Attorney General, shall engage in reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained.. (Gov. Code, § 12532, subd. (a).)

13) Requires any private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations. (Gov. Code, § 7320, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The humanitarian crisis posed by the spread of COVID-19 in private immigration detention facilities in California is having disastrous consequences for those detained in those facilities, and should be of grave concern given the significant challenges this potential outbreak has for California as a whole. Civil detention facilities which house immigrants have requirements in their federal contracts with respect to health and safety, but it appears that these private corporations routinely violate the health and safety requirements for these facilities in their daily operations and have not followed public health orders or protocols. AB 263 ensures that California takes steps to clarify and state that all private detention facilities in the state must comply with and adhere to state and local public health orders. The bill empowers local and state public health officials to issue public health orders for private facilities, informed by the latest information on COVID-19."

2) **Private Detention Facilities**: The federal government contracts with private detention facilities throughout the country to house immigration detainees and federal criminal pretrial detainees. There are a variety of concerns regarding the use of private detention facilities.

   In 2016, the U.S. Department of Justice's Office of the Inspector General conducted an investigation of private prisons and issued a report. The investigation found that private prisons were less safe than federal prisons, poorly administered, and provided limited long-term savings for the federal government. For example, the contract prisons confiscated eight times as many contraband cell phones annually on average as the federal institutions. Private prisons also had higher rates of assaults, both by inmates on other inmates and by inmates on staff. Additionally, two of the three contract prisons inspected by the Inspector General's Office discovered they were improperly housing new inmates in Special Housing Units (SHU), which are normally used for disciplinary or administrative segregation, until beds became available in general population housing. (See Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons, August 2016, (https://oig.justice.gov/reports/2016/e1606.pdf#page=2.)

   There are also concerns with the transparency of private detention facilities. Private, for-profit detention facilities are accountable to their shareholders and not the people of the State of California. For example, these facilities claim exemptions to the public disclosure requirements under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) because they are private corporations, which makes the potentially unlawful conduct occurring within the facility hidden from discovery. These facilities similarly claim an exemption to California's State counterpart, the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq).

   AB 32 (Bonta), Chapter 739, Statutes of 2019, prohibited CDCR from entering into, or renewing contracts with private for-profit prisons after January 1, 2020, and eliminates their use by January 1, 2028. AB 32 also prohibits the operation of a private detention facility (including those housing immigration detainees) within the state, except as specified. AB 32 provides limited exemptions to the prohibition on private prisons.

3) **The Trump Administration Sued California Over AB 32:** The Trump administration filed a lawsuit against the state of California on January 24, 2020, asserting that AB 32's ban on private prison contracts unconstitutionally interferes with the federal prison and immigration detention systems. The case, filed in U.S. District Court in San Diego, asked a

judge to ban the enforcement of the law against the federal government.

The lawsuit stated, "California, of course, is free to decide that it will no longer use private detention facilities for its state prisoners and detainees, but it cannot dictate that choice for the federal government, especially in a manner that discriminates against the federal government and those with whom it contracts." (https://www.latimes.com/california/story/2020-01-25/trump-administration-sues-california-over-private-prison-ban)

In October, 2020, AB 32 was mostly upheld by a federal district court judge, with the court denying a Trump administration request to block the law, but exempting the use of some private prisons. *Geo Grp., Inc. v. Newsom*, (Southern Dist. Cal.) 2020 U.S. Dist. LEXIS 187261.) The judge did conclude the AB 32 is an obstacle as applied to the U.S. Marshal Services contracts with private detention centers, but not an obstacle to the Bureau of Prisons' halfway houses and ICE's contracts with private prison centers. The judge stated, "Congress clearly authorized USMS to use private detention facilities in limited circumstances, such as where the number of USMS detainees in a given district exceeds the available capacity of federal, state, and local facilities" and "A.B. 32 therefore forecloses USMS from contracting with private detention facilities in those districts in which there does not exist sufficient availability in federal, state, or local facilities, in contravention of Congress' clear and manifest objective that the option be available," (*Id.* at 56.)

As part of its holding, the court found that "AB 32 does not regulate federal contracting, but rather the operation of private detention facilities within California, and any incidental effect on the Federal Government's contracting interests does not suffice to establish field preemption. Accordingly, the Court concludes that the United States' interest in federal contracting does not preempt AB 32. (*Id.* at 88-89.)

The district court judge did preliminarily enjoin enforcement of California's ban against USMS's private detention facilities because they may face "disrupted operations and the incurrence of incompensable damages, respectively." https://www.courthousenews.com/judge-largely-upholds-california-law-banning-private-prisons/

An appeal was filed from the District Court's judgment.

4) **Immigration Detention Facilities and Covid-19:** Private detention centers, like jails and prisons, are epicenters for infectious diseases because of the higher prevalence of infection, the higher levels of risk factors for infection, the close contact in often overcrowded, poorly ventilated facilities, and the poor access to health-care services relative to that in community settings.

According to ICE, In March, they convened a working group between medical professionals, disease control specialists, detention experts, and field operators to identify additional enhanced steps to minimize the spread of the virus. ICE states that they have evaluated its detained population based upon the CDC's guidance for people who might be at higher risk for severe illness as a result of COVID-19 to determine whether continued detention was appropriate. Of this medical risk population, ICE has released over 900 individuals after evaluating their immigration history, criminal record, potential threat to public safety, flight

risk, and national security concerns. ICE says that this same methodology is currently being applied to other potentially vulnerable populations currently in custody and while making custody determinations for all new arrestees. (https://www.ice.gov/coronavirus (detention - updated 5/4/2020).)

There is confusion as to which entities should be administering vaccines to individuals held in immigration detention centers. Because detainees are in federal custody, state health officials have said that they aren't sure who is responsible for vaccination at the detention centers. "I will tell you very transparently right now, the answer is I don't know," California Surgeon General Nadine Burke Harris, who chairs the state's vaccine advisory committee, told committee members in February, 2021. "There are some real complex jurisdictional issues that are at play." (https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/)

So far, 571 people have tested positive for the coronavirus in California's seven immigration detention centers, including 270 at the Adelanto facility in San Bernardino County. California's detention centers can house about 7,000 people, although attorneys estimate that they are now housing fewer than 2,000.

U.S. Immigration and Customs Enforcement officials say that while its medical staff may help administer the vaccinations, it's up to states and local health departments to come up with the doses and a plan for vaccinating detainees. Six of California's seven centers are operated by private companies. (*Id.*)

5) **Private Detention Centers and State and Local Health Orders:** The federal court case (*Geo Grp., Inc. v. Newsom, supra*) which upheld the ban on private detention facilities in California discussed the fact that the fact that regulation and oversight of health matters is generally an issue for state and local governments.

The 9th District Court of Appeals noted that "The [U.S.] Supreme Court has long recognized that "the regulation of health and safety matters is primarily, and historically, a matter of local concern" and pointed out that "the Ninth Circuit recently recognized that "California possesses the general authority to ensure the health and welfare of inmates and detainees in facilities within its borders." *Geo Grp., Inc. v. Newsom*, at 45-46 (citing *Hillsborough City. v. Automated Med. Labs., Inc.* (1985), 471 U.S. 707, and *United States v. California* (9th Cir. 2019), 921 F.3d 865, 885-86 (9th Cir. 2019)

To the extent that that this bill seeks to clarify that private detention facilities must comply with state and local public health orders, that clarification seems consistent with the scope of California's existing authority to do so.

6) **Argument in Support**: According to the *Immigrant Legal Defense*, "During a pandemic in which the actions of a few can impact the wellbeing of so many, accountability for private prison operators is paramount. While the consequences of COVID- 19 in private detention are dire for those detained, it should be of grave concern given the significant challenges this potential outbreak has for California as a whole. Outbreaks in these facilities can quickly overwhelm local hospitals and drain medical resources, threatening community health and public safety.

"Civil detention facilities that house immigrants have requirements in their federal contracts with respect to health and safety. This includes language requiring each facility to "comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues including communicable disease reporting requirements." In addition to the mandatory requirements related to public health, the federal government has issued broad requirements related to the day to day operations of these facilities, including requirements related to health and safety in these facilities.

"Based on reports in the press and by those detained inside these facilities, it appears that these private corporations routinely violate the health and safety requirements for these facilities in their daily operations, and have not followed public health orders or protocols. California must take steps to clarify that all private detention facilities in the state must abide by state and local public health orders. This would ensure the statewide coordination that will be needed to secure our state during the COVID-19 pandemic. California must also ensure that all of these facilities are following occupational health and safety regulations in their operations."

7) **Related Legislation**:

a) AB 937 (Carrillo), would eliminate the existing ability under the Values Act for law enforcement agencies to cooperate with federal immigration authorities by giving them notification of release for inmates or facilitating inmate transfers.

8) **Prior Legislation**:

a) AB 3228 (Bonta), Chapter 190, Statutes of 2020, required any private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations.

b) AB 2598 (Bonta), of the 2019-2020 Legislative Session, would have required, before a California law enforcement agency enters into or amends a Memorandum of Understanding (MOU) regarding the agency's participation on the Federal Joint Terrorism Task Force, that the agency submit the proposed MOU and any procedures relevant to the subject matter of the MOU to its governing body, or the Attorney General as appropriate, for approval. AB 2598 was never heard in the Assembly Public Safety Committee.

c) AB 3181 (Bonta), of the 2019-2020 Legislative Session, would have required any facility in the state that detains, confines, or holds an individual in custody to develop written policies and procedures to ensure persons detained have access to basic minimum standards with respect to due process and access to the court and to legal counsel and the minimum standards specified in state regulations. AB 3181 was never heard in Assembly Public Safety Committee.

d) AB 32 (Bonta), Chapter 739, Statutes of 2019, prohibits CDCR from entering into, or renewing contracts with private for-profit prisons after January 1, 2020, and eliminates their use by January 1, 2028. AB 32 also prohibits the operation of a private detention facility within the state, except as specified.

e) AB 103 (Committee on Budget), Chapter 17, Statutes of 2017, requires that until July 1, 2027, the Attorney General, to engage in reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or private locked detention facility in which an accompanied or unaccompanied minor is housed or detained.

f) AB 1320 (Bonta), of the 2017-2018 Legislative Session, would have prohibited CDCR from entering into, or renewing contracts with private prisons after January 1, 2018, and eliminates their use by January 1, 2028. AB 1320 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU of California
Alianza Sacramento
American Academy of Pediatrics, California
California Attorneys for Criminal Justice
California Collaborative for Immigrant Justice
California Immigrant Policy Center
California Pan - Ethnic Health Network
California Public Defenders Association (CPDA)
Campaign for Immigrant Detention Reform
Central Valley Immigrant Integration Collaborative
Centro Legal De LA Raza
Clergy and Laity United for Economic Justice
Coastside Immigrant Action Group
Community Legal Services in East Palo Alto
County Health Executives Association of California (CHEAC)
Dolores Street Community Services
Ella Baker Center for Human Rights
Hand in Hand: the Domestic Employers Network
Health Officers Association of California
Human Rights Watch
Ice Out of Marin
Immigrant Defenders Law Center
Immigrant Defense Advocates
Immigrant Legal Defense
Inland Equity Partnership
Justice LA
Law Office of Helen Lawrence
N
National Association of Social Workers, California Chapter
Nextgen California

Norcal Resist
Oakland Privacy
Oasis Legal Services
Phi Delta Epsilon of Ucla
Physicians for Human Rights
Public Law Center
Rei
Riverside Sheriff's Association
Riverside Sheriffs' Association
San Francisco Public Defender
San Joaquin College of Law - New American Legal Clinic
Secure Justice
Siren: Services Immigrant Rights and Education Network
Southeast Asia Resource Action Center
Step Up Sacramento
Ucla David Geffen School of Medicine
Unitarian Universalist Legislative Ministry, California
University of San Francisco
Worksafe

Oppose

None
Analysis Prepared by:

David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 23, 2021
Counsel: David Billingsley

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

AB 329 (Bonta) – As Introduced January 27, 2021

SUMMARY: Requires bail to be set at $0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. Requires the court to order a return of money or property paid to a bail bond company under specified circumstances, including when the individual makes all court appearances in a criminal case charged in connection with the arrest. Specifically, **this bill**:

1) Requires bail to be set at $0 (no bail money required to secure release) for all misdemeanor and felony offenses except the following:

   a) A serious felony, as defined, or a violent felony, as specified;

   b) A felony violation of Section 69;

   c) A violation of violating a domestic violence restraining order, as specified;

   d) A violation of dissuading a witness from testifying, when punishment is imposed based on specified additional allegations;

   e) A violation of spousal rape;

   f) A violation of domestic violence, as specified;

   g) A violation of specified protective orders if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party;

   h) A violation of criminal threats where the offense is charged as a felony;

   i) Stalking;

   j) A violation of an offense requiring registration as a sex offender;

   k) Driving under the influence and driving under the influence causing injury;

   l) A felony violation looting, as specified; and,

   m) Felon in possession of a firearm.

2) Requires the Judicial Council to prepare, adopt, and annually revise a statewide schedule of bail amounts for the offenses of this bill which are not eligible for $0 bail.

3) States that it is the intent of the Legislature to enact further changes to current law to ensure that a defendant is not detained pending trial simply due to an inability to pay for the amount of bail in the statewide schedule.

4) Specifies that penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council, as specified.

5) States that when setting the bail schedule for the offenses of this bill which are not eligible for $0 bail, the Judicial Council shall consider the seriousness of the offense charged.

6) Specifies that costs relating to conditions of release from custody shall not be imposed on a person released on bail or own recognizance.

7) Requires the court to order a return of money or property paid to a bail bond licensee by or on behalf of the arrestee to obtain bail under any of the following circumstances:

   a) An action or proceeding against an arrestee who has been admitted to bail is dismissed;

   b) No charges are filed against the arrestee within 60 days of arrest; or,

   c) The arrestee has made all court appearances during the pendency of the action or proceeding against the arrestee.

8) States that the bail bonds person shall be entitled to retain a surcharge not to exceed 5 percent of the amount paid by the arrestee or on behalf of the arrestee.

9) Specifies that money or property shall be returned within 30 days and shall be to the entity or person who paid the money or property to the bail bond licensee to obtain bail.

10) States that a court shall order a return of money or property pursuant to this section only for a bail contract entered into on or after January 1, 2022.

EXISTING LAW:

1) Prohibits excessive bail. (U.S. Const., 8th Amend. & Cal. Const., art. I, sec. 12.)

2) States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great:

   a) Capital crimes;

   b) Felonies involving violence or sexual assault if the court finds by clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; and,

c) Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., art. I, sec. 12.)

3) States that in setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations. (Cal. Const., art. I, sec. 28, subd. (f)(3).)

4) Requires the court to consider the safety of the victim and the victim's family in setting bail and release conditions for a defendant. (Cal. Const., art. I, sec. 28, subd. (b)(3).)

5) Lists several factors that the court must consider in setting, reducing, or denying bail: the protection of the public; the seriousness of the charged offense; the defendant's prior criminal record; and, the probability of his or her appearing at trial or hearing of the case. Public safety is the primary consideration. (Pen. Code, § 1275, subd. (a).)

6) States that in considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant. (Pen. Code, § 1275, subd. (a).)

7) Requires the superior court judges in each county to prepare, adopt, and annually revise a uniform, countywide bail schedule. (Pen. Code, § 1269b, subd. (c).)

8) Provides that at the time of issuing an arrest warrant, the magistrate shall fix the amount of bail which, in the magistrate's judgment, will be reasonable and sufficient for the defendant to appear, if the offense is bailable. (Pen. Code, § 815a.)

9) Provides that an arrested person must be taken before the magistrate with 48 hours of arrest, excluding Sundays and holidays. (Pen. Code, 825, subd. (a).)

10) Authorizes the officer in charge of a jail, or the clerk of the superior court to approve and accept bail in the amount fixed by the arrest warrant, the bail schedule, or an order admitting to bail in case or surety bond, and to issue and sign an order for the release of the arrested person, and to set a time and place for the person's appearance in court. (Pen. Code, 1269b, subd. (a).)

11) States that if a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, the officer shall file a declaration with the judge requesting an order setting a higher bail. (Pen. Code, 1269c.)

12) Allows a defendant to ask the judge for release on bail lower than that provided in the schedule of bail or on his or her own recognizance and states that the judge is authorized to

set bail in an amount that he or she deems sufficient to ensure the defendant's appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence, and to set bail on the terms and conditions that he or she, in his or her discretion, deems appropriate, or he or she may authorize the defendant's release on his or her own recognizance. (Pen. Code, § 1269c.)

13) After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. (Pen. Code, § 1289.)

14) Prohibits the release of a defendant on his or her OR for any violent felony until a hearing is held in open court and the prosecuting attorney is given notice and an opportunity to be heard on the matter. (Pen. Code, § 1319.)

15) Specifies conditions for a defendant's release on his or her own recognizance (OR). (Pen. Code, § 1318.)

16) Provides that a defendant released on bail for a felony who willfully fails to appear in court, as specified, is guilty of a crime. (Pen. Code, § 1320.5.)

17) Specifies that if an on-bail defendant fails to appear for any scheduled court appearance, the bail is forfeited unless the clerk of the court fails to give proper notice to the surety or depositor within 30 days, or the defendant is brought before the court within 180 days. (Pen. Code, § 1305, subds. (a) & (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Reforming California's unjust and unsafe money bail system remains a critical priority for me. The jailhouse door should not swing open and closed based on how much money someone has. There is no disputing the present system wrongly treats people who are rich and guilty better than those who are poor and innocent. The status quo is indefensible and disproportionately impacts low-income Californians and communities of color. Money bail epitomizes unequal justice and we must continue our fight for equal justice under the law.

   "For those who are not wealthy, paying for bail comes at a great cost and whole families suffer, as they take on long-term debt to purchase their loved one's safety and freedom. AB 329 reforms money bail not by eliminating it, but rather setting bail at zero dollars for misdemeanor and nonviolent felony charges. For all other crimes, the new legislation would require the California Judicial Council to create a uniform bail schedule with standard bail amounts statewide.

   "The new legislation would also require people who pay bail to receive a refund, minus a small surcharge that is retained by the bail bond company, if the charges against them are dropped or if they attend all mandatory court appearances. In addition, the legislation states

that it is the intent of the Legislature to enact further changes to ensure that a person is not held in custody awaiting trial because they cannot afford bail."

2) **Background**: In California, bail is a constitutional right except when the defendant is charged with: (1) a capital crime; (2) a felony involving violence or sex and the court finds that the person's release would result in great bodily harm to another; or (3) when the defendant has threatened another and the court finds it likely that the defendant might carry out that threat. The constitution also allows for an arrestee to be released upon a written promise to appear, known as release on own recognizance. The constitution prohibits excessive bail. (Cal. Const. art. I, § 12.)

   Courts require many defendants to deposit monetary bail in order to be released from custody. Bail is intended to act as a financial guarantee to the court that the defendant will appear for all required court hearings. An arrestee may post bail with his or her own cash, or may post bail using a bail bond.

   Currently, each county sets a bail schedule based exclusively on the charged offense. The bail schedule is used by the arresting officer to allow an arrestee to post bail before his or her court appearance. Once a defendant is brought before the court, there must be an individualized determination of the appropriate amount of bail.

   Another function of the bail system is protection of the community. Arguably, the current bail system does not actually address community safety concerns because there is no assessment of risk, at least when bail is posted before the arrestee appears before the court.

3) **Challenges Presented by Money Bail System**: There are a number of challenges that the bail system faces. A growing number of people acknowledge that the bail system has a negative impact on communities of color and those who come from the lower end of the socio-economic spectrum. In short, those who have money have the ability to confront their criminal charges while free from confinement in county jail. Those who are too poor to post bail are forced to remain incarcerated, and are more likely to plead guilty in order to get out of custody. Prior to the initial court appearance, the determination as to who remains detained while awaiting resolution of criminal charges is made based on money, and not whether the person is a present danger to the community or whether he or she will return to court.

   The ability to be out of custody while facing criminal charges carries a number of inherent advantages. A defendant who is released on bail is able to carry on with his or her life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are not only able to maintain employment but they are also encouraged to do so.

   By broadly applying $0 bail, this bill would allow individuals to achieve pretrial release independent of their financial ability to make bail.

4) **SB 10 (Hertzberg) and Subsequent Referendum:** SB 10 (Hertzberg) was signed into law on August 28, 2018. SB 10 eliminated cash bail in California. In its place, SB 10 created a risk-based non-monetary prearraignment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person's determined to be too high a risk to assure public safety if released.

A veto referendum to overturn the bill was filed on August 29. On January 16, 2019, the California Secretary of State reported that the estimated number of valid signatures exceeded 110 percent of the 365,880 required signatures, putting the targeted law, SB 10, on hold until voters the November 2020 election. The referendum was identified as Proposition 25 on the ballot. A "Yes" vote indicated a preference to uphold the statutory changes made by SB 10 and end the use of cash bail in California. Voters rejected SB 10 by a margin of 55% to 45%. The voters' veto of SB 10 maintained the existing structure of cash bail for criminal defendants in California.

In the case of *Assembly v. Deukmajian*, the California Supreme Court provided the following guidance to the Legislature when it seeks to enact new legislation in an area where the voters have rejected an earlier legislative effort by means of a referendum: "Unless the new measure is 'essentially different' from the rejected provision and is enacted 'not in bad faith, and not with intent to evade the effect of the referendum petition,' it is invalid."'(*Assembly* v. *Deukmejian* (1982), 30 Cal.3d 638, 678 *(citing Reagan* v. *City of Sausalito* (1962), 210 Cal.App.2d 618, 629-631 and *Martin* v. *Smith* (1959), 176 Cal.App.2d 115, 118-119.)

5) **Judicial Council Emergency Bail During the Pandemic:** On April 6, 2020, the Judicial Council issued an emergency rule on the bail schedule. That rule contained provisions making most offenses eligible for a bail amount of $0. The $0 provisions are the same as the $0 bail provisions of this bill with respect to arrests on new offenses and contained the same list of crimes that were exempted from the $0 bail directive.

   The emergency rule also addressed bail for post conviction violations (probation, parole, mandatory supervision). Under the statewide Emergency Bail Schedule, bail for all violations of misdemeanor probation, whether the arrest is with or without a bench warrant, were directed to be set at $0. Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, were directed to be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court's countywide schedule of bail for charges of conviction listed in exceptions including any enhancements.

   The emergency order provided that, "Notwithstanding any other law, this rule establishes a statewide Emergency Bail Schedule, which is intended to promulgate uniformity in the handling of certain offenses during the state of emergency related to the COVID-19 pandemic."

   The emergency bail rule was rescinded, effective June 20, 2020. Some county court systems have voluntarily continued to implement the order.

   This bill would incorporate aspects of the emergency bail order into the existing statutory structure on bail. This bill would require a $0 bail on arrests for the same offenses that were the subject of the emergency bail order when an individual is arrested and charged with a new offense. The emergency bail order also applied to the release/detention of individuals facing post-conviction proceeding for violation of their post-conviction supervision (probation, parole, post-release community supervision, and mandatory supervision). This bill does not apply to individuals facing arrest or court proceedings for violations on any post-conviction supervision.

6) **Mandatory Directives of This Bill and Their Interaction with the California Constitution and Existing Statutory Law:** The emergency bail order was put in place "notwithstanding any other law." This bill seeks to incorporate the language of the emergency order into the existing statutory scheme on bail. As such, it can't be applied "notwithstanding any other law," but must be incorporated consistently with the other statutes with which it will interact. The provisions of this bill must also interact with the provisions of the California Constitution regarding bail.

   This bill contains a directive that a judge *shall* set bail at the initial court appearance at $0, except for the 13 specified offenses for which a bail will be set at amount established by the Statewide Bail Schedule, established by the bill.

   This language suggests that it is mandatory for a judge set a $0 bail on any of the offenses specified for $0 bail under the provisions of this bill, regardless of the other statutory directives the judge is instructed to consider in setting an amount for bail.

   The California Constitution, Article I, section 28, contains directive language that specifies in setting, reducing or denying bail, the judge *shall* consider the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. That same section goes on to direct that court that public safety and the safety of the victim *shall* be the primary considerations. Existing statutory law (Pen. Code, §1275) contains the same directive language regarding the criteria a court should use to set bail as Article I, section 28.

   Current law also provides a mechanism for a peace officer to submit a declaration to the court prior to the defendant's initial appearance, in which the peace officer sets forth reasons why the bail amount in the schedule of bail is insufficient to insure the defendant's appearance or ensure the protection of a victim. (Pen. Code, §1269c.)

   These statutory and constitutional directives set up a potential conflict with the language of this bill if it is in fact meant to require bail to be set a $0 regardless of the other circumstances that a court is required to consider. Given that the constitution and other existing statutes direct the court to consider specific elements in setting bail, a statutory directive that the bail for most criminal offenses be set at $0 at the initial appearance might be considered a baseline from which to start. It that is the case, the court would still exercise discretion to vary from the $0 baseline if the public safety, the defendant's likelihood to appear, the defendant's financial status, and consideration of possible release conditions indicated that a variance from $0 bail was in order. This bill also directs that bail for the offenses not eligible for $0 be set at the amount of the statewide bail schedule. It is not clear if a judge would be able to set the bail below that amount if the defendant's circumstances (including financial conditions), combined with other conditions of release would be consistent with the defendant appearing in court and public safety considerations.

7) **Arrest Warrants:** Judges can issue arrest warrants directing any peace officer to arrest a particular person and bring them before the court. When a judge issues an arrest warrant they must set bail and note the amount on the warrant. (Pen. Code, § 815a.) Admitting a defendant to bail on an arrest warrant is currently governed by Pen. Code 1269c, which states that the jail in which an arrested person is held in custody "may approve and accept bail in

the amount fixed by the **warrant of arrest**, schedule of bail, or order admitting to bail in cash or surety bond . . ."

This bill strikes out the language concerning the bail amount being fixed by the warrant of arrest and specifies that arrested person must have the bail set pursuant to $0 bail or pursuant to the statewide bail schedule if it is an offense excepted from $0 bail:

> " . . . ~~may~~ ***shall*** approve and accept bail in the amount fixed ~~by the warrant of arrest, schedule of bail, or order admitting to bail~~ ***pursuant to this section*** in cash or surety bond . . ." (excerpt from this bill.)

It is not clear if the intent of this bill is to require jails to release individuals from custody if they are arrested on a warrant issued by the court for an offense that would be eligible for $0 bail under the provisions of this bill.

8) ***Humphrey* Case on Bail Before the California Supreme Court:** On January 2018, the California First District Court of Appeal found that California's money bail system violated due process and equal protection sections of the California Constitution. (People v. Humphrey (1st District, 2018), 19 Cal. App. 5th 1006.) The court required trial court judges to factor defendants' financial capacities and non-monetary options for release when determining bail. The appellate court's decision was appealed to the California Supreme Court.

On August 26, 2020, the California Supreme Court granted precedential effect to the portion of the *Humphrey* appellate opinion which held that that judges should consider financial status as part of the requirement that bail determinations must be based on consideration of individualized criteria, pending the Supreme Courts final ruling on the appeal. *In re Humphrey*, 2020 Cal. LEXIS 5543

On January 5, 2021, the Supreme Court Heard oral arguments on *Humphrey.* The Supreme Court limited review to the following issues: (1) Did the Court of Appeal err in holding that principles of constitutional due process and equal protection require consideration of a criminal defendant's ability to pay in setting or reviewing the amount of monetary bail? (2) In setting the amount of monetary bail, may a trial court consider public and victim safety? Must it do so? (3) Under what circumstances does the California Constitution permit bail to be denied in noncapital cases? Included is the question of what constitutional provision governs the denial of bail in noncapital cases — article I, section 12, subdivisions (b) and (c), or article I, section 28, subdivision (f)(3), of the California Constitution — or, in the alternative, whether these provisions may be reconciled.
(https://newsroom.courts.ca.gov/event/supreme-court-oral-arguments)

The Supreme Court's decision should address the interaction of two separate provisions in the California Constitution that which address the subject of bail. Article I, section 12, and Article I, section 28, both of which contain language on bail and the courts' ability to deny bail. Section 28 was enacted more recently, but at the time of its enactment no effort was made to repeal or amend section 12. Both sections contain language about the denying bail, but section 12 specifies a fairly narrow range of circumstances under which a court can deny bail (capital crimes and felony crimes involving acts of threats or violence and a substantial likelihood that the person's release would result in great bodily harm to others) and Section

28, which references the courts' ability to deny bail, but does not describe circumstances under which bail might be denied).

The decision of the California Supreme Court on the *Humphrey* case is expected soon. That decision should provide some further clarity about the parameters for the courts to grant and deny bail within the current statutory and constitutional framework, but will not necessarily provide any technical guidance for the application of this bill.

9) **Money returned to arrestee:** Under the current system of cash bail, bail agents provide a service to individuals that are detained on a cash bail with is too large for them to post in its entirety. The bail agent will post the full amount of the bail in exchange for a premium (fee) which is generally 10% of the bail amount. The bail agent posts the full amount of the bail and accepts the risk that they might lose the bail money if the person for whom the bail has been posted fails to appear in court. Bail agents keep the fee regardless of the outcome of the case, as well as if the bail is posted at arrest and no charges are subsequently filed.

   This bill would require bail agents to return the fee to individuals that have paid the bail agent to post the full amount of the bond. This bill would allow bail agents to keep 5% of the premium as a "surcharge." It is not clear how money would be returned to the arrestee or other individual that paid the premium for the bail bond. This bill would require the person's fee to be returned to them if:

   a) If case against the person that posted bail is dismissed;

   b) If no charges are filed against the person within 60 days of arrest; or,

   c) If the person has made all court appearances during the pendency of the action or proceeding against the arrestee.

10) **Arguments in Support**: According to the *Insurance Commissioner, Ricardo Lara*, "As the regulator of the bail bond industry in California, my Department receives consumer complaints which suggest that not only is the bail industry in need of long-overdue reform, but the general population is also at risk of being victimized by unscrupulous bail agents. Subjects of such complaints include bribery, money laundering, kidnapping and false imprisonment for purposes of extortion, illegal solicitation, using jail inmates and jail staff as recruiters for bail transactions, embezzlement of collateral or premium, and abuse of unmonitored attorney-client jail visiting rooms.

   "In California, 97% of people who make bail use a bail agent and pay a non-refundable fee for their freedom. For most, this is not a simple transaction. People often have to borrow from friends and family, enter into exploitative financing schemes, or put up their property – even their homes – as collateral. Regardless of whether a case is dismissed, or charges are not ultimately filed after an arrest, the bail company keeps its premium. Despite this plain inequity, the only alternative is worse: being stuck in jail could mean losing a job, missing rent payments, losing custody of a child, or ultimately pleading guilty when innocent just to get home and prevent these harms.

   "California's current bail system unnecessarily compromises victim and public safety because it bases a person's liberty on financial resources rather than the likelihood of future

criminal behavior and exacerbates socioeconomic disparities and racial bias. This bill represents a critical step forward in securing Californians' rights to the presumption of innocence and due process after being accused of a crime. **Assembly Bill 329** would also protect Californians against many of the nefarious and predatory practices carried out by the bail bond industry."

11) **Arguments in Opposition**: According to the *Golden State Bail Agents Association*, "We **OPPOSE** AB 329 because it is a bad faith attempt to thwart the will of the voters, who only a few months ago rejected Proposition 25 in a landslide of over 2 million votes. Proposition 25 was a referendum on Assemblymember Bonta and Senator Hertzberg's Senate Bill 10 which eliminated money bail in California.

I. AB 329 is in bad faith, and with intent to evade the effect of the referendum petition:

"In 1982 the California Supreme Court addressed voters' referendum power:

> 'Since its inception, the right of the people to express their collective will through the power of the referendum has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure. [Citations]. Unless the new measure is 'essentially different' from the rejected provision and is enacted '**not in bad faith, and not with intent to evade the effect of the referendum petition**,' it is invalid. [Citations].'"(*Assembly* v. *Deukmejian* (1982) 30 Cal.3d 638, 678, emphasis added).

"These bills require a mandatory state bail schedule that sets bail at zero for all but a few charges. Even for those not set at zero bail amounts, the bail agent must refund all but 5% of the bail bond premium if the case against the arrestee has been dismissed, the prosecutor fails to file charges within 60 days of arrest or the arrestee attends all court appearances.

"Bail agents are exposed to the full risk of forefeiture the moment the arrestee is bailed out of jail because the arrestee could flee. A bail agent that posts a $50,000 bail bond is liable to pay $50,000 to the court if the arrestee fails to attend all of his or her required court dates. This is why under current law, the bail agents' premium is fully earned upon release of the arrestee. Obviously, no bail agent will post bail for free, at zero bail, be exposed to the risk of forfeiture and be unable to pay employees and other overhead expenses.

"As for the few cases where a bail amount will be set, bail agents have no control over when prosecutors file or dismiss cases, and requiring the refund of 95% of the bail premium when arrestees attend all their court dates creates a perverse incentive. Under current law, bail agents are incentivized to make sure arrestees attend all of their court dates. AB 329 would disincentivize bail agents to help arrestees attend court.

"It is clear from the above that AB 329 is invalid because it has been introduced in bad faith in an attempt to evade the referendum result by destroying the business model of bail agents.

II. Setting bail at zero is an unconstitutional violation of Separation of Powers:

"The California Constitution requires bail amounts to be set by the courts, not the legislature:

> 'Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.
>
> A person may be released on his or her own recognizance in the **court's** discretion.' (Cal.Const. Art. I, §12, emphasis added).

"AB 329 is a legislative mandate setting bail at zero for most charges and requiring a statewide bail schedule. As shown above, the California Constitution vests the power to set bail amounts with the courts and not the legislature. Only the courts can make informed decisions about bail amounts because they have the evidence and arrestee's criminal history before them."

12) **Related Legislation**:

a) SB 262 (Hertzberg), is identical to this bill. SB 262 is set for hearing on March 23, 2021, in the Senate Public Safety Committee.

b) AB 38 (Cooper), would establish a statewide bail schedule. AB 38 is awaiting hearing in the Assembly Public Safety Committee.

13) **Prior Legislation**:

a) SB 10 (Hertzberg), Chapter 644, Statutes of 2018, revised the pretrial release system by limiting pretrial detention to specified persons, eliminating the use of bail schedules, and establishing pretrial services agencies tasked with conducting risk assessments on arrested person and preparing reports with recommendations for conditions of release. SB 10 was repealed by referendum November, 2020.

b) AB 42 (Bonta), was substantially similar to SB 10 (Hertzberg). AB 42 failed passage on the Assembly Floor.

c) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his/her own recognizance.

d) AB 2388 (Hagman), of the 2013-2014 Legislative Session, would have required the Judicial Council to prepare, adopt, and annually revise an advisory statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses, except Vehicle Code infractions, that counties could reference when setting a countywide bail schedule. AB 2388 was held on the Appropriations Suspense file.

e) SB 210 (Hancock), of the 2013-2014 Legislative Session, would have revised the criteria for determining eligibility for pretrial release from custody. SB 210 was ordered to the

Assembly Inactive File.

f) SB 210 (Hancock), of the 2011-12 Legislative Session, would have required a court to determine, with public safety as the primary consideration, whether a defendant charged with a jail felony is eligible for release on his or her own recognizance (OR). SB 210 failed passage on the Assembly Floor.

g) SB 1180 (Hancock), of the 2011-12 Legislative Session, was substantially similar to SB 210. SB 1180 was ordered to the Senate Inactive File.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition (Co-Sponsor)
California Department of Insurance
California Labor Federation, Afl-cio
California Public Defenders Association (CPDA)
Californians for Safety and Justice
City of Alameda
Conference of California Bar Associations
Drug Policy Alliance
Ella Baker Center for Human Rights
Essie Justice Group
Friends Committee on Legislation of California
Initiate Justice
League of Women Voters of California
Rubicon Programs
San Francisco Public Defender
SEIU California
Smart Justice California
Western Center on Law & Poverty, INC.

Oppose

American Bail Coalition
American Property Casualty Insurance Association
California Attorneys for Criminal Justice
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
Crime Victims United of California
Golden State Bail Agents Association, INC.
Peace Officers Research Association of California (PORAC)

Analysis Prepared by:

David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: March 23, 2021
Chief Counsel: Gregory Pagan

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

AB 308 (Chen) – As Amended February 18, 2021

As Proposed to be Amended in Committee

SUMMARY: Provides that the Board of State and Community Corrections (BSCC) shall administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. Specifically, **this bill**:

1) Provides that the Board of State and Community Corrections (BSCC) shall administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. Grant funds shall be directed to three regional task forces:

   a) Region one shall consist of the Counties of Alameda, Contra Costa, San Mateo, Santa Clara, and the city and county of San Francisco;

   b) Region two shall consist of the Counties of Los Angeles and Ventura; and,

   c) Region three shall consist of the Counties of Orange, Riverside, San Bernardino, and San Diego

2) Requires the BSCC upon receipt of an application for funding from law enforcement agencies, designate a lead law enforcement agency in each region. Each lead agency shall convene a task force consisting of the lead agency and any other participating law enforcement agencies in that region.

3) Requires each regional task force to form a joint task force coordinating council consisting a representative of the California Highway Patrol, the sheriff or chief of police, or a representative of the sheriff or chief of police of the lead agency, and the chiefs of police, sheriffs, or their representatives of each participating law enforcement agency in that region.

4) Provides that upon formation of the joint task force coordination council, the BSCC shall distribute funding to the regional task force. Each joint task force coordination council shall meet at least quarterly to share intelligence and discuss strategies and tactics to reduce the incidence of vehicle burglary and theft in the region, to identify interregional movement of vehicle burglary and theft suspects, and to discuss ways to improve coordination of enforcement activities within that region, with the other regional task forces, and statewide.

5) States that funds allocated to the task force shall be expended with goal of reducing vehicle burglary and theft, identifying suspects engaging in vehicle burglary or vehicle theft, identifying interregional movement of vehicle burglary and theft offenders, coordinating joint vehicle burglary and theft efforts, and best practices to the incidence of vehicle burglary and theft. Grant funds may be used to pay for officer overtime, travel, training, and related

costs. Funds may be also used for the acquisition and repair of bait vehicles and related equipment.

6) Requires each regional task force, upon request, share intelligence regarding vehicle burglary and theft incidents and the identity, location , or other identifying information regarding offenders suspected of committing vehicle burglary or vehicle theft with nonparticipating law enforcement agencies and with other regional task forces.

7) Provides that upon receipt of funding from the BSCC, the joint task force coordination council for each region shall determine how grant funds will be allocated among participating law enforcement agencies within the regional task with the goals of maximizing the reduction of vehicle burglary and theft in the region and improving the coordination of intelligence regarding his crime with other regional task forces.

8) Requires the lead agency of each regional task force shall report to the BSCC at least two years of crime statistics relating to vehicle burglary and vehicle theft in the jurisdictions participating in the task force, The lead agency shall report to the BSCC the vehicle burglary and theft statistics for all participating law enforcement agencies for the two years commencing with the receipt of funds. The report shall also include statistics on the number of arrests for vehicle burglary and vehicle theft within the two years after receipt of grant funds in each of the law enforcement agencies participating in the regional task force and annually thereafter.

9) States that the BSCC shall compile the statistics received from each of the three regional task forces and shall on or after January 1 of the year subsequent to the receipt of those reports and annually thereafter, report this information to the Legislature and the Governor and shall post the report on the BSCC internet website.

10) States that funding received shall be used to supplement, rather that supplant, funding for existing programs.

11) Provides that each law enforcement agency participating in a regional task force and each regional task force shall operate in such a manner that intelligence, sting operations, and other enforcement activities are coordinated and shared with participating law enforcement agencies and with the other two regional task forces.

12) States that the BSCC may impose additional reporting and application requirements appropriate to the administration of grants.

13) Provides that this program shall be implemented only to the extent that funding is provided in the Budget Act. The reporting requirements will shall terminate three years after the elimination of state funding to the regional task forces.

14) States that no more than 5 percent of funds appropriated shall be retained by the BSCC for administrative costs, including technical assistance, training, and the cost of producing the required reports.

EXISTING LAW:

1) Provides that the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare may develop within their respective jurisdictions a Central Valley Rural Crime Prevention Program, which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office. (Pen. Code, §14171, subd. (a).)

2) Provides that the parties to each agreement shall form a regional task force known as the "Central Valley Rural Crime Task Force" which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations. (Pen. Code, § 14171, subd. (b).)

3) Allows the Central Valley Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects. (Pen. Code, § 14171, subd. (b)(2).)

4) Provides that the Central Coast Rural Crime Prevention program (CRCPP) shall be administered in San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo Counties by the county district attorney's office under a joint powers agreement with the county sheriff's office, and in Monterey County by the county sheriff's office under a joint powers agreement with the county district attorney's office. (Pen. Code, § 14181, subd. (a).)

5) Provides that the parties to each agreement shall form a regional task force known as the "Central Coast Rural Crime Task Force" which includes the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owners or associations. (Pen. Code, § 14181, subd. (b).)

6) Authorizes the Central Coast Rural Crime Task Force to develop rural crime prevention programs which contain a system for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects. (Pen. Code, § 14181, subd. (b)(1).)

7) Authorizes the Central Coast Rural Crime Task Force to develop a uniform procedure for all participating counties to collect data on agricultural crimes, establish a central database for the collection and maintenance of data on agricultural crimes, and designate one participating county to maintain the database. (Pen. Code, § 14181, subd. (b)(2).)

8) States that the staff for each program developed by the Central Coast Rural Crime Task Force shall consist of the personnel designated by the district attorney and the sheriff of each county in accordance with the joint powers agreement. (Pen. Code, § 14181, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Existing law requires that the victim of vehicle burglary testify to prove that their vehicle's doors were locked when the burglary occurred.

"In 2019, it was reported that gang members from the San Francisco Bay area have been traveling to the Los Angeles area to take advantage of this loophole in existing law by breaking into vehicles likely rented by tourists. Members specifically target rental cars and popular tourist destinations. These targets are desirable since the victim is not likely able to return to testify and prove their vehicle doors were locked at the time of the incident. The victim's absence has led to break-ins going unpunished.

"The Public Policy Institute of California (PPIC) found that after the passage of Proposition 47 in 2014, larceny increased by roughly 9 percent, or about 135 more thefts per 100,000 residents. Thefts from motor vehicles account for about three-quarters of this increase. Larceny-theft from motor vehicles rose from 217,029 in 2013 to 243,040 in 2018. It also rose as a percentage of all larceny-theft from 34.9% to 39.1% during that period.

"With COVID-19 largely decreasing the overall crime rates across the nation – vehicle break ins have been the exception to that statistic.

"PPIC reported in four of California's major cities: Los Angeles, Oakland, San Diego, and San Francisco, vehicle burglary has increased by a staggering 22%, in comparison to month by month numbers from 2018.

"Vehicle burglaries are a serious issue in the Bay Area and it is now spreading to the Los Angeles area. The Los Angeles police department commander recently stated that vehicle burglaries were the "No. 1 crime trend in West Bureau in 2019."

2) **Background**: According to background materials supplied by the author's office, "In New Jersey, the Assembly Task Force on Auto Theft was created in October 1992, to study auto theft in the state and report back to the New Jersey Legislature with recommendations. The New Jersey State Police reports that car thefts dropped from 63,533 in 1992 to 35,158 in 1999.

"The Illinois Motor Vehicle Theft Prevention Council (MVTPC), also founded in 1991, is an 11-member collaboration between insurance, state's attorneys, and law enforcement tasked with reducing auto theft, insurance fraud, and other motor vehicle theft-related crimes in Illinois. Between its inception and 2014 the MVTPC reduced vehicle theft in Illinois by 77%, recovered 41,217 stolen vehicles, and saved $342 million, as stated on its website www.icjia.state.il.us/sites/mvtpc.

"The Texas Auto Burglary and Theft Prevention Authority (TABTA) was established by the 72nd Texas Legislature in 1991 to assess automobile burglary, theft, and economic theft in Texas, make recommendations, and provide financial support to combat the problems. According to the TABTPA and the Texas Department of Public Safety's Uniform Crime Reporting, Crime Information Bureau, from 1991 to 2009, the auto theft rate in Texas dropped from 163,837 to 76,617.

"The Arizona Automobile Theft Authority (AATA), established in 1992 by the Arizona State Legislature and funded by semi-annual assessments on insurance companies, reduced auto theft 57% by 2016. During that year, the Auto Theft Task Force had recovered 1,561 stolen vehicles, made 369 felony arrests, and provided 2,084 assists to other law enforcement agencies."

3) **Prior Legislation**:

   a) AB 2962 (Chen), of the 2019-2020 Legislative Session, was almost identical to this bill in that it required the BSCC to administer a grant program for law enforcement agencies that participate in a regional vehicle burglary task force. AB 2962 was not heard by the Committee due to Covid-19 restrictions.

   b) AB 517 (Chen), of the 2019-20 Legislative Session, would have established the Orange County Property Crimes Task Force subject to an appropriation from the General Fund. AB 517 was held on the Assembly Appropriations Committee suspense file.

   c) AB 2536 (Chen), of the 2017-18 Legislative Session, would have established the Orange County Property Crimes Task Force subject to an appropriation from the General Fund. AB 2536 was held on the Assembly Appropriations Committee suspense file.

4) **Argument in Support:** According to the *Riverside Sheriffs' Association*, "AB 308 creates a Vehicle Burglary and Theft Task Force, provides state funding to identify and apprehend criminals that break into vehicles to steal personal belongings and/or the vehicle itself. This bill will assist local agencies share information about car thefts and burglaries to develop best practices.

   "Creating this task force will provide funding for salaries, equipment, and travel for representatives of major law enforcement heavily impacted by vehicle burglary. This bill will provide law enforcement with adequate tools to stop car burglars and to prosecute to the fullest extent of the law."

5) **Argument in Opposition:** According to *The California Immigrant Policy Center*, "AB 308 facilitates information sharing across law enforcement agencies, yet there is little limitation of oversight over the agencies involved and the data shared amongst them. Joint task forces have a long history of harming local communities through racial profiling, suspicion less surveillance, investigations, and perhaps more importantly, the climate of fear they foster across communities of color in California. For noncitizens, they come with added risk of disclosing an individual's immigration status with other agencies, including with federal immigration authorities. Without stronger provisions to protect the information and privacy of immigrant community members, this bill will likely continue to erode trust between community members and law enforcement."

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition of School Safety Professionals
Los Angeles School Police Officers Association
Palos Verdes Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

Oppose

California Immigrant Policy Center
Oakland Privacy

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

AMENDMENTS TO ASSEMBLY BILL NO. 308
AS AMENDED IN ASSEMBLY FEBRUARY 18, 2021

Amendment 1
On page 3, in line 14, after the first "of" insert:

a representative from the Department of the California Highway Patrol,

Amendment 2
On page 3, in line 17, strike out "A" and strike out lines 18 to 21, inclusive

Amendment 3
On page 5, in line 6, after "means" insert:

the Department of the California Highway Patrol or

Amendment 4
On page 5, in line 21, strike out "agencies, including the", strike out line 22 and insert:

agencies.

- 0 -

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Chen. Law enforcement: vehicle burglary and theft task forces.

Existing law defines the crime of burglary to include entering a vehicle when the doors are locked with the intent to commit grand or petit larceny or a felony. Existing law makes the burglary of a vehicle punishable as a misdemeanor or a felony.

Existing law prohibits the theft of a vehicle, as specified. Existing law makes the theft of a vehicle punishable as a misdemeanor or felony.

This bill would require the Board of State and Community Corrections to administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. The bill would make law enforcement agencies in specified counties eligible to participate in the regional task forces. The bill would require participating law enforcement agencies in each region to form a joint task force coordination council consisting of a representative of the Department of the California Highway Patrol and the sheriff or chief of police, or their representatives, of each participating law enforcement ~~agency, and would authorize the Commissioner of the Department of the California Highway Patrol to designate a representative of the California Highway Patrol to serve as an ex officio member for each task force.~~ agency. The bill would require the board to distribute funding to the task forces, and require those funds to be expended with the goal of reducing vehicle burglary and theft, identifying suspects engaged in vehicle burglary and theft, identifying interregional movement of vehicle burglary and theft offenders, coordinating joint vehicle burglary and theft enforcement efforts, and promoting law enforcement training and best practices to reduce the incidence of vehicle burglary and theft.

The bill would additionally require the lead agency of each task force to report to the board specified information relating to the crimes of vehicle burglary and theft in the jurisdictions participating in the task force. The bill would require the board to compile those statistics and, on or after January 1 of the year subsequent to the receipt of those reports, and annually thereafter, to report this information to the Legislature and the Governor and post the information on the board's internet website. The bill would require these provisions to be implemented only to the extent that funding is appropriated for these purposes, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Contra Costa, Los Angeles, Orange, San Bernardino, San Diego, San Mateo, Santa Clara, Riverside, and Ventura, and the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

[AMENDED IN...]

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL **No. 308**

Introduced by Assembly Member Chen
(Coauthors: Assembly Members Choi, Lackey, and Nguyen)

[Date introduced]

[Title will go here]

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Chen. Law enforcement: vehicle burglary and theft task forces.

[Text of Legislative Counsel's Digest will go here]

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 308

AMENDED IN ASSEMBLY FEBRUARY 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL No. 308

Introduced by Assembly Member Chen
(Coauthors: Assembly Members Choi, Lackey, and Nguyen)

January 25, 2021

An act to add Title 12.7 (commencing with Section 14260) to Part 4 of the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Chen. Law enforcement: vehicle burglary and theft task forces.

Existing law defines the crime of burglary to include entering a vehicle when the doors are locked with the intent to commit grand or petit larceny or a felony. Existing law makes the burglary of a vehicle punishable as a misdemeanor or a felony.

Existing law prohibits the theft of a vehicle, as specified. Existing law makes the theft of a vehicle punishable as a misdemeanor or felony.

This bill would require the Board of State and Community Corrections to administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. The bill would make law enforcement agencies in specified counties eligible to participate in the regional task forces. The bill would require participating law enforcement agencies in each region to form a joint task force coordination council consisting of *a representative of the Department of the California Highway Patrol and* the sheriff or chief of police, or their representatives, of each participating law enforcement

~~agency, and would authorize the Commissioner of the Department of the California Highway Patrol to designate a representative of the California Highway Patrol to serve as an ex officio member for each task force.~~ *agency.* The bill would require the board to distribute funding to the task forces, and require those funds to be expended with the goal of reducing vehicle burglary and theft, identifying suspects engaged in vehicle burglary and theft, identifying interregional movement of vehicle burglary and theft offenders, coordinating joint vehicle burglary and theft enforcement efforts, and promoting law enforcement training and best practices to reduce the incidence of vehicle burglary and theft.

The bill would additionally require the lead agency of each task force to report to the board specified information relating to the crimes of vehicle burglary and theft in the jurisdictions participating in the task force. The bill would require the board to compile those statistics and, on or after January 1 of the year subsequent to the receipt of those reports, and annually thereafter, to report this information to the Legislature and the Governor and post the information on the board's internet website. The bill would require these provisions to be implemented only to the extent that funding is appropriated for these purposes, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Contra Costa, Los Angeles, Orange, San Bernardino, San Diego, San Mateo, Santa Clara, Riverside, and Ventura, and the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

Page 2

SECTION 1. Title 12.7 (commencing with Section 14260) is added to Part 4 of the Penal Code, to read:

TITLE 12.7. VEHICLE BURGLARY AND THEFT TASK FORCES

+

14260. (a) The Board of State and Community Corrections shall administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. Grant funds shall be directed to three regional task forces.

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Page 3

(b) (1) Region one shall consist of the Counties of Alameda, Contra Costa, San Mateo, Santa Clara, and the city and county of San Francisco.

(2) Region two shall consist of the Counties of Los Angeles and Ventura.

(3) Region three shall consist of the Counties of Orange, Riverside, San Bernardino, and San Diego.

(c) (1) The board shall, upon receipt of applications for funding from law enforcement agencies, designate a lead law enforcement agency in each region specified in subdivision (b). Each lead agency shall convene a task force consisting of the lead agency and any other participating law enforcement agencies in that region. Each regional task force shall form a joint task force coordination council consisting of *a representative from the Department of the California Highway Patrol,* the sheriff or chief of police, or a representative of the sheriff or chief of police of the lead agency, and the chiefs of police, sheriffs, or their representatives of each participating law enforcement agency in that region. ~~A representative of the Department of the California Highway Patrol designated by the Commissioner of the California Highway Patrol may serve as an ex officio member on each of the regional task forces.~~

Amendment 1

Amendment 2

(2) Upon the formation of the joint task force coordination council for each region, the board shall distribute funding to the task force. The joint task force coordination council may, by vote of the membership, designate a different lead agency for that region's task force. If the members of the coordination council cannot agree on the designation of the lead agency, the board may designate the lead agency for that region. Each joint task force coordination council shall meet at least quarterly to share intelligence and discuss strategies and tactics to reduce the incidence of vehicle burglary and theft in the region, to identify interregional movement of vehicle burglary and theft suspects, and to discuss ways to improve coordination of enforcement activities within that region, with the other regional task forces, and statewide.

(3) Funds allocated to the task force shall be expended with the goal of reducing vehicle burglary and theft, identifying suspects engaging in vehicle burglary or vehicle theft, identifying interregional movement of vehicle burglary and theft offenders,

Page 3 coordinating joint vehicle burglary and theft enforcement efforts,
Page 4 and promoting law enforcement training and best practices to reduce the incidence of vehicle burglary and theft. Grant funds may be used to pay for officer overtime, travel, training, and related costs. Funds may also be used for the acquisition and repair of bait vehicles and related equipment.

(4) Each regional task force shall, upon request, share intelligence regarding vehicle burglary and theft incidents and the identity, location, or other identifying information regarding offenders suspected of committing vehicle burglary or vehicle theft with nonparticipating law enforcement agencies and with other regional task forces.

(5) Upon receipt of funding from the board, the joint task force coordination council for each region shall determine how grant funds will be allocated among participating law enforcement agencies within the regional task force with the goals of maximizing the reduction of vehicle burglary and theft in the region and improving the coordination of intelligence regarding this crime with other regional task forces.

(d) (1) The lead agency of each regional task force shall report to the board at least two years of crime statistics relating to the crimes of vehicle burglary and vehicle theft in the jurisdictions participating in the task force. For contract cities, a participating sheriff may designate whether a contract city is, or is not, included within the area covered by the grant and include or omit those statistics, as appropriate. The lead agency shall report to the board the vehicle burglary and theft statistics for all participating law enforcement agencies in the regional task force for the two years commencing with the receipt of funds from the board. The report shall also include statistics on the number of arrests made for vehicle burglary and vehicle theft within the two years after receipt of grant funds in each of the law enforcement agencies participating in the regional task force and annually thereafter.

(2) The board shall compile the statistics received from each of the three regional task forces pursuant to paragraph (1) and shall, on or after January 1 of the year subsequent to the receipt of those reports, and annually thereafter, report this information to the Legislature and the Governor and shall post the report on the board's internet website.

Page 5

(3) A report to be submitted pursuant to paragraph (2) shall be submitted in compliance with Section 9795 of the Government Code.

(e) As used in this section, the following terms have the following meanings:

(1) "Participating law enforcement agency" means *the Department of the California Highway Patrol or* a police or sheriff's department that chooses to apply for funding pursuant to this section.

Amendment 3

(2) "Vehicle theft" means grand theft of a vehicle in violation of paragraph (1) of subdivision (d) of Section 487 of this code, or the taking of a vehicle in violation of Section 10851 of the Vehicle Code.

(f) Funding received pursuant to this chapter shall be used to supplement, rather than supplant, funding for existing programs.

(g) Each law enforcement agency participating in a regional task force and each regional task force shall operate in such a manner that intelligence, sting operations, and other enforcement activities are coordinated and shared with participating law enforcement agencies and with the other two regional task forces. Upon request, this information shall also be shared with nonparticipating law enforcement~~—agencies, including the Department of the California Highway Patrol.~~ *agencies.*

Amendment 4

(h) As used in this section, "vehicle burglary" includes theft of vehicle parts or components from a vehicle.

14261. The board may impose additional reporting and application requirements appropriate to the administration of grants pursuant to this chapter.

14262. Regional task forces and participating law enforcement agencies may use additional resources, including any available grant funding to supplement its operations and activities.

14263. (a) This title shall be implemented only to the extent that funding is provided by an appropriation pursuant to the Budget Act. The reporting requirements of subdivision (d) of Section 14260 shall terminate three years after the elimination of any state funding to the regional task forces for the purposes of this chapter.

(b) No more than 5 percent of funds appropriated for this chapter shall be retained by the board for administrative costs, including technical assistance, training, and the cost of producing the report required pursuant to subdivision (d) of Section 14260.

Page 6

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique concern of a rising incidence of vehicle burglaries and thefts in urban regions including the Counties of Alameda, Contra Costa, Los Angeles, Orange, San Bernardino, San Diego, San Mateo, Santa Clara, Riverside, and Ventura, and the City and County of San Francisco.

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AMENDMENTS TO ASSEMBLY BILL NO. 308
AS AMENDED IN ASSEMBLY FEBRUARY 18, 2021

Amendment 1
On page 3, in line 14, after the first "of" insert:

a representative from the Department of the California Highway Patrol,

Amendment 2
On page 3, in line 17, strike out "A" and strike out lines 18 to 21, inclusive

Amendment 3
On page 5, in line 6, after "means" insert:

the Department of the California Highway Patrol or

Amendment 4
On page 5, in line 21, strike out "agencies, including the", strike out line 22 and insert:

agencies.

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LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Chen. Law enforcement: vehicle burglary and theft task forces.

Existing law defines the crime of burglary to include entering a vehicle when the doors are locked with the intent to commit grand or petit larceny or a felony. Existing law makes the burglary of a vehicle punishable as a misdemeanor or a felony.

Existing law prohibits the theft of a vehicle, as specified. Existing law makes the theft of a vehicle punishable as a misdemeanor or felony.

This bill would require the Board of State and Community Corrections to administer grants to law enforcement agencies that participate in regional vehicle burglary and theft reduction joint task forces. The bill would make law enforcement agencies in specified counties eligible to participate in the regional task forces. The bill would require participating law enforcement agencies in each region to form a joint task force coordination council consisting of a representative of the Department of the California Highway Patrol and the sheriff or chief of police, or their representatives, of each participating law enforcement ~~agency, and would authorize the Commissioner of the Department of the California Highway Patrol to designate a representative of the California Highway Patrol to serve as an ex officio member for each task force.~~ agency. The bill would require the board to distribute funding to the task forces, and require those funds to be expended with the goal of reducing vehicle burglary and theft, identifying suspects engaged in vehicle burglary and theft, identifying interregional movement of vehicle burglary and theft offenders, coordinating joint vehicle burglary and theft enforcement efforts, and promoting law enforcement training and best practices to reduce the incidence of vehicle burglary and theft.

The bill would additionally require the lead agency of each task force to report to the board specified information relating to the crimes of vehicle burglary and theft in the jurisdictions participating in the task force. The bill would require the board to compile those statistics and, on or after January 1 of the year subsequent to the receipt of those reports, and annually thereafter, to report this information to the Legislature and the Governor and post the information on the board's internet website. The bill would require these provisions to be implemented only to the extent that funding is appropriated for these purposes, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Contra Costa, Los Angeles, Orange, San Bernardino, San Diego, San Mateo, Santa Clara, Riverside, and Ventura, and the City and County of San Francisco.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

[AMENDED IN...]

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL **No. 308**

Introduced by Assembly Member Chen
(Coauthors: Assembly Members Choi, Lackey, and Nguyen)

[Date introduced]

[Title will go here]

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Chen. Law enforcement: vehicle burglary and theft task forces.

[Text of Legislative Counsel's Digest will go here]

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

Date of Hearing: March 23, 2021
Chief Counsel: Gregory Pagan

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

AB 515 (Chen) – As Introduced February 9, 2021

As Proposed to be Amended in Committee

SUMMARY: Allows a repossession agency, and its employees to enter upon real property, not open to the public, and without the consent of the owner when they are searching for collateral or repossessing collateral, and upon completing the search, leave the private property immediately.

EXISTING LAW:

1) Defines "repossession agency" to mean and includes any person who, for any consideration whatsoever, engages in business, or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to collateral registered under the provisions of the Vehicle Code, which is subject to a security agreement, except as specified. (Bus. & Prof. Code § 7600.5.)

2) Exempts registered process servers from vehicular trespass laws when driving any vehicle upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, or the person in lawful possession. (Pen. Code § 602, subd. (m).)

3) Exempts registered process servers from trespass laws when entering any land under cultivation, or enclosed by fence, belonging to, or occupied by another, or unenclosed land where signs forbid trespassing. (Pen. Code § 602.8.)

4) Allows registered process servers access to a gated community for a reasonable period of time for the purpose of performing lawful service of process. (Code Civ. Proc. § 415.21.)

5) Requires any person who makes more than 10 services of process, within this state, during one calendar year to file a verified certificate of registration as a process server with the county clerk in the county in which he or she resides, or has his or her principal place of business. (Bus. & Prof. Code § 22350.)

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "AB 515 addresses the problem that occurs when a debtor who calls the police claiming that a repossessor is trespassing when they are making a repossession. This is an ongoing occurrence when a vehicle is being repossessed or other collateral such as solar panels are being repossessed. The debtor calls the police and claims that the repossessor is trespassing. This often takes an hour-long discussion with the

police to clarify that the repossessor is not trespassing, and at times it has resulted in the repossessor being arrested for trespassing. Even though the charges will be dismissed by a judge, the trouble with the unnecessary arrest wastes time and money for both the police and for the repossessor. This bill makes the common sense clarification that a repossessor is not trespassing when they come on to private property to search for collateral under a lawful repossession order and leaves immediately upon completing the search or repossessing the collateral."

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Amendments Mock-up for 2021-2022 AB-515 (Chen (A))

*********Amendments are in BOLD*********

Mock-up based on Version Number 99 - Introduced 2/9/21
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 602 of the Penal Code is amended to read:

602. Except as provided in subdivisions (u), (v), and (x), and Section 602.8, ~~every~~ *a* person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.

(b) Carrying away any kind of wood or timber lying on those lands.

(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.

(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.

(e) Digging, taking, or carrying away from land in ~~any~~ *a* city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.

(f) Maliciously tearing down, damaging, mutilating, or destroying ~~any~~ *a* sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to ~~any~~ *a* city, county, city and county, town, or village, or upon any property of ~~any~~ *a* person, by the state or by an automobile association, which sign, signboard, or notice is intended to indicate or designate a road or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to ~~any~~ *a* city, county, town, or village, or dedicated to the public, or upon any property of ~~any~~ *a* person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or ~~any~~ *a* picture, sign, or device intended to call attention to it.

(g) Entering upon any lands owned by ~~any other~~ *another* person whereon oysters or other shellfish are planted or ~~growing;~~ *growing,* or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal ~~occupant;~~ *occupant,* or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(h) (1) Entering upon lands or buildings owned by ~~any other~~ *another* person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human ~~consumption;~~ *consumption,* or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal ~~occupant;~~ *occupant,* or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) shall be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not ~~be construed to~~ preclude prosecution or punishment under any other law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring ~~any~~ *a* lawful business or occupation carried on by the owner of the land, the owner's agent, or the person in lawful possession.

(l) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, the owner's agent, or the person in lawful possession, and any of the following:

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent, or by the person in lawful possession to leave the lands.

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands.

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands.

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving ~~any~~ *a* vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession.

~~This~~

(1) This subdivision does not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process, provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(2) This subdivision does not apply to a repossession agency, as defined in Section 7500.2 of the Business and Professions Code, and its employees, when they are on private property searching for collateral or repossessing collateral, and, upon completing that search, leave the private property ***immediately*** ~~*within one minute*~~.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that ~~he or she is~~ *they are* acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested. However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall

inform the law enforcement agency to which the request was made when the assistance is no longer desired, before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession. However, this subdivision does not apply to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code) or by the federal National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants, as defined in Section 34213.5 of the Health and Safety Code, constitutes property not open to the general ~~public; however,~~ *public, but* this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchperson, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail that is closed to the public and that has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where ~~he or she~~ *the person* has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) (1) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that ~~he or she is~~ *they are* acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular ~~person;~~ *person,* or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

(2) This subdivision applies only to a person who has been convicted of a crime committed upon the particular private property.

(3) A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(4) ~~Where~~ *If* the person has been convicted of a violent felony, as described in subdivision (c) of Section 667.5, this subdivision applies without time limitation. ~~Where~~ *If* the person has been convicted of any other felony, this subdivision applies for no more than five years from the date of conviction. ~~Where~~ *If* the person has been convicted of a misdemeanor, this subdivision applies for no more than two years from the date of conviction. ~~Where~~ *If* the person was convicted for an infraction pursuant to Section 490.1, this subdivision applies for no more than one year from the date of conviction. This subdivision does not apply to convictions for any other infraction.

(u) (1) Knowingly entering, by an unauthorized person, upon ~~any~~ *an* airport operations area, passenger vessel terminal, or public transit facility if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary, to the extent, in the case of a passenger vessel terminal, as defined in subparagraph (B) of paragraph (3), that the exterior boundary extends shoreside. To the extent that the exterior boundary of a passenger vessel terminal operations area extends waterside, this prohibition applies if notices have been posted in a manner consistent with the requirements for the shoreside exterior boundary, or in any other manner approved by the captain of the port.

(2) A person convicted of a violation of paragraph (1) shall be punished as follows:

(A) By a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the person refuses to leave the airport or passenger vessel terminal after being requested to leave by a peace officer or authorized personnel.

(C) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, for a second or subsequent offense.

(3) As used in this subdivision, the following definitions ~~shall~~ control:

(A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.

(B) "Passenger vessel terminal" means only that portion of a harbor or port facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal Regulations, with a secured area that regularly serves scheduled commuter or passenger operations. For the purposes of this section, "passenger vessel terminal" does not include any area designated a public access area pursuant to Section 105.106 of Title 33 of the Code of Federal Regulations.

(C) "Public transit facility" has the same meaning as specified in Section 171.7.

(D) "Authorized personnel" means ~~any~~ *a* person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card. "Authorized personnel" also means ~~any~~ *a* person who has a valid port identification card issued by the harbor operator, or who has a valid company identification card issued by a commercial maritime enterprise recognized by the harbor operator, or any other person who is being escorted for legitimate purposes by a person with a valid port or qualifying company identification card. "Authorized personnel" also means ~~any~~ *a* person who has a valid public transit employee identification.

(E) "Airport" means ~~any~~ *a* facility whose function is to support commercial aviation.

(v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile area of an airport, passenger vessel terminal, as defined in subdivision (u), or public transit facility, as defined in Section 171.7, if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision, is a violation of this subdivision, punishable by a fine of not more than five hundred dollars ($500) for the first offense. A second and subsequent violation is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) Notwithstanding paragraph (1), if a first violation of this subdivision is responsible for the evacuation of an airport terminal, passenger vessel terminal, or public transit facility and is responsible in any part for delays or cancellations of scheduled flights or departures, it is punishable by imprisonment of not more than one year in a county jail.

(w) Refusing or failing to leave a battered ~~women's~~ *person's* shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered ~~woman~~ *person* in an amount equal to the relocation expenses of the battered ~~woman and her~~ *person and their* children if those expenses are incurred as a result of trespass by the defendant at a battered ~~women's~~ *person's* shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that ~~he or she~~ *the person* has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) A person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

(y) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a courthouse or a city, county, city and county, or state building if entrances to the courthouse or the city, county, city and county, or state building have been posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

Date of Hearing: March 23, 2021
Counsel: Matthew Fleming

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

AB 419 (Davies) – As Amended March 9, 2021

As Proposed to be Amended in Committee

SUMMARY: Expands the prohibition of an attorney disclosing identifying information to a defendant, members of the defendant's family, or anyone else, any personal identifying information, as defined, of the victim or witness. Specifically, **this bill**:

1) Prohibits an attorney from disclosing all personal identifying information of a victim or witness, instead of merely prohibiting the disclosure of their address and telephone number.

2) Eliminates the misdemeanor penalty for willfully disclosing such information.

3) Defines "personal identifying information," by cross reference, as follows:

   "any address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person."

EXISTING LAW:

1) Requires the prosecuting attorney to disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

   a) The names and addresses of persons the prosecutor intends to call as witnesses at trial;

   b) Statements of all defendants;

   c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged;
   d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial;

e) Any exculpatory evidence; and,

f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial. (Pen. Code, § 1054.1.)

2) Prohibits an attorney from disclosing to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness unless specifically permitted to do so by the court after a hearing and a showing of good cause. (Pen. Code, § 1054.2, subd. (a)(1).)

3) Allows an attorney to disclose or permit to be disclosed the address and telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. (Pen. Code, § 1054.2, subd. (a)(2).)

4) Makes it a misdemeanor offense to willfully disclose the address or telephone number of a victim or witness in violation of that prohibition. (Pen. Code, § 1054.2, subd. (a)(3).)

5) Provides that if a defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone personal identifying information number of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court. (Pen. Code, § 1054.2, subd. (b).)

6) Defines "personal identifying information" as "any name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license, or identification number, social security number, place of employment, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voiceprint, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person, or an equivalent form of identification." (Pen. Code, § 530.55, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: "California has a moral and civic obligation to protect the privacy of all of its citizens. At no time is this obligation more important than when an individual has an opportunity to disclose crucial information about a crime case. While existing law protects certain information about a victim or witness of a crime, it does not go far enough.

Technology and communications have evolved and access to sensitive information is more readily available. AB 419 is a common-sense measure to update existing privacy laws related to potential crimes and ensure that any victim or witness of a crime feels safe and secure to come forward with the knowledge they possess."

2) **Protection of Identifying Information Victims and Witnesses**: Existing law prohibits the disclosure of a victim or witness's address or telephone number to a defendant, a member of the defendant's family, or anyone else unless specifically permitted by the court. It also prohibits disclosure to all members of the defense team, unless it is required to prepare for the defense case. In situations where a defendant is self-represented, the defendant may only contact the witness or victim through a private investigator licensed by the Department of Consumer Affairs and appointed by the court, unless good cause otherwise dictates. This bill would expand the information that is prohibited from disclosure by cross referencing the definition of "personal identifying information" in the penal code. In addition to protecting the address and telephone number, this bill would also prohibit the disclosure of important information such as the health insurance number, taxpayer identification number, or social security number to the defendant. In addition, this bill would eliminate the misdemeanor penalty for willfully violating the prohibition on disclosure.

   As introduced, this bill would have also prohibited the disclosure of the place of employment of any victim or witness. However, the place of employment is often an important contextual part of a police report and other documents that are routinely turned over in discovery. Unlike a social security number or a taxpayer identification number, the place of employment often informs how, why, and when an eyewitness was able to observe an alleged crime. It can also be an important starting point for how a case is investigated from either a prosecutorial, or a defense perspective. The proposed committee amendments therefore exempt the place of employment from the prohibition on information sharing in a routine case. Existing law appears to provide adequate tools to prohibit the disclosure of this information in the appropriate case. For example, a prosecutor may file a motion with the court to withhold this information, and the court can make an individualized decision as to whether disclosure is required or not. (*See People v. Hobbs* (Supreme Court of California, 1994) 7 Cal. 4th 948, 966 ("the right to discovery is not absolute; 'the trial court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest.'") (*citing People v. Luttenberger* (Supreme Court of California, 1990) 50 Cal. 3d 1, 21).)

3) **Arguments in Support**: According to the bill's sponsor, the *Conference of California Bar Associations*: "In criminal discovery, defense attorneys are entitled to receive the names and addresses of the prosecution's witnesses and their relevant statements. (See Pen. Code, § 1054.1.) To guard against harassment or retaliation by a defendant or the defendant's family, existing law prohibits defense attorneys from disclosing or permitting the disclosure of a victim or witness's addresses and telephone numbers to a third party without a court order. (See Pen. Code, § 1054.2.)

   "AB 419 would allow the protected information of victims and witnesses to include most forms of personal identifying information listed under Penal Code section 530.55, including dates of birth, social security numbers, financial account numbers, and driver's license information. In addition to protecting the privacy rights of victims and witnesses, this measure would provide a legal basis for a defense attorney to resist a demand made by a

client or their family for police reports containing a victim or witness's personal identifying information, other than their address or telephone number."

4) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*: "Currently, attorneys are prohibited from disclosing the address or telephone number of a victim or witness to a defendant. AB 419 takes this prohibition to an extreme by prohibiting the disclosure of a wide swath of personally identifiable information, damaging a defendant's ability to review their own discovery. Everything from a person's occupation to their passport number would be restricted. This bill would put a large burden on attorneys to not accidently disclose a vastly expanded array of information. This bill could also hurt defendants by prohibiting their attorney from disclosing information to them that may be necessary for building their defense. For example, disclosing a witness's employment, which is frequently a major part of the discovery in a criminal case."

5) **Prior Legislation**:

   a) AB 2820 (Obernolte), of the 2019 – 2020 Legislative Session, was similar to this bill in that it would have prohibited an attorney from sharing the personal identifying information of a victim or witness, and would have defined such information as including, but not limited to all the information covered by this bill as well as any email, photograph, video, and place of employment. AB 2820 died in the Assembly Public Safety Committee.

   b) AB 2886 (Frommer), Chapter 522, Statutes of 2006, created new crimes related to identity theft and defined "personal identifying information" in the penal code.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations

Oppose

California Attorneys for Criminal Justice

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Amended Mock-up for 2021-2022 AB-419 (Davies (A))

Mock-up based on Version Number 98 - Amended Assembly 3/9/21
Submitted by: Matthew Fleming, Assembly Committee on Public Safety

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

SECTION 1. Section 1054.2 of the Penal Code is amended to read:

1054.2. (a) (1) Except as provided in paragraph (2), no attorney shall disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the personal identifying information of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1, other than the name of the victim or witness, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

(2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the personal identifying information of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.

(b) If the defendant is acting as their own attorney, the court shall endeavor to protect the personal identifying information of a victim or witness by providing for contact only through a private investigator licensed by the Department of Consumer Affairs and appointed by the court or by imposing other reasonable restrictions, absent a showing of good cause as determined by the court.

(c) For the purposes of this section, personal identifying information has the same definition as in Section 530.55, except that it does not include **name, place of employment, or** an equivalent form of identification.

Date of Hearing: March 23, 2021
Chief Counsel: Gregory Pagan

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

AB 57 (Gabriel) – As Amended February 25, 2021

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Justice (DOJ) to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported, and requires the basic peace officer course curriculum to include on the topic of hate crimes a specified hate crimes video developed by the Commission on Peace Officer Standards and Training (POST). Specifically, **this bill**:

1) Requires the DOJ, in consultation with subject matter experts, including civil rights organizations, law enforcement agencies, and academic experts to do the following:

    a) Every three years, conduct reviews of all law enforcement agencies to evaluate the accuracy of hate crime data provided and agencies' hate crime policies. During this review, the department shall obtain all of the following:

        i) Hate Crimes statistical data;

        ii) Copies of law enforcement agencies' hate crimes policies; and,

        iii) Information regarding the agencies community outreach activities on hate crimes, including mandated hate crimes brochures;

2) Distribute information to all agencies on hate crimes reporting procedures in cooperation with the Commission on Peace Officer Standards and Training (POST);

3) Periodically do outreach to all law enforcement agencies to increase awareness of the DOJ's Hate Crimes Rapid Response Team, as necessary;

4) Adds region-specific data fields to the DOJ hate crimes data base, as recommended by the State Auditor in their 2018 report on hate crimes;

5) Creates and provide law enforcement agencies with outreach materials to better engage their communities, to provide updates on local trends relating to and statistics regarding hate crimes committed in their communities, and to provide updates regarding threats in the form of hate crimes in their communities. In complying with this paragraph, the department shall do all of the following:

    a) Provide all outreach materials in the Medi-Cal threshold languages;

b) Provide guidance and best practices for law enforcement agencies to follow when conducting outreach to vulnerable communities about hate crimes within their jurisdictions. This should include collaboration within city and county human relations and human rights commission;

c) Include presentation materials specific to various types of communities historically vulnerable to hate crimes; and,

d) Provide required hate crimes materials to POST for inclusion in its model policy framework developed, as specified.

6) Implement a school based program in conjunction with school districts and local law enforcement agencies aimed at educating students on the negative consequences of, and how to recognize bias, prejudice, harassment, and violence and report all suspected hate crimes to prevent future hate crimes, as recommended by the State Auditor; and,

7) Submit hate crimes reports provided by local law enforcement agencies to the Federal Bureau of Investigation (FBI) for inclusion in the national crime repository for crime data collected for purposes the Uniform Crime Reporting Program, as required by the national Hate Crimes Statistics Act.

8) Requires POST to consult with subject matter experts including but not limited to law enforcement agencies, civil rights groups, academic experts and the DOJ in developing guidelines and a course of instruction on "Hate crimes" for peace officers, and for persons not yet employed as peace officers but are enrolled in a training academy for law enforcement officers.

9) Requires POST, commencing on or after June 1, 2022 to incorporate the November 2017 video course entitled "Hate Crimes: Identification and Investigation" or any successor video thereto into the basic course curriculum.

10) Provides that POST make the Hate Crimes: Identification and Investigation video available to stream via the learning portal.

11) Requires each peace officer, on or before January 1, 2023, watch the above Hate Crimes video via the learning portal.

12) Provides that POST shall develop and periodically update an interactive refresher course of instruction and training for in-service peace officers on the topic of hate crimes and make the course and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crimes incidents, and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.

13) POST shall require that the above hate crimes refresher course to be taken by in-service peace officers every three years.

14) Makes numerous legislative findings and declarations.

EXISTING LAW:

1) Requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

2) States that the hate crimes course of instruction shall make the maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

   a) Indicators of hate crime;

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

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

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

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

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

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

   h) Preparation for, and response to future anti-Arab/middle Eastern and anti-Islamic hate crime waves that the Attorney General determines is likely. (Pen. Code, § 13519.6, subd, (b).)

3) Provides that the guidelines developed by POST shall incorporate certain procedures and techniques, as specified, and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

   a) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement;

   b) The definition of "hate crime", as specified;

c) References to hate crime statutes as specified; and,

d) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

i) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.

ii) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.

iii) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.

iv) Providing victim assistance and follow-up, including community follow-up.

v) Reporting. (Pen. Code § 13519.6, subd. (c).)

4) Defines "hate crime" as a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

5) Requires all state and local agencies to use the above definition when using the term "hate crime." (Pen. Code, § 422.9.)

6) Specifies that "hate crime" includes a violation of statute prohibiting interference with a person's exercise of civil rights because of actual or perceived characteristics, as listed above. (Pen. Code, § 422.55, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As hate crimes are on the rise, the Legislature must stand united against hate. Hate-motivated violence isn't theoretical—it deeply impacts our communities in California and it requires a forceful response. AB 57 would implement specific recommendations from the State Auditor to better prevent, respond to, and document hate crimes in California. Most significantly, AB 57 would strengthen training requirements for peace officers and require improved guidance, outreach, data collection and reporting by the California Department of Justice."

2) **POST Training Requirements**: POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832,

subd. (a).)

According to the POST website, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, *Regular Basic Course Training Specifications*; <http://post.ca.gov/regular-basic-course-training-specifications.aspx>.] These topics are taught during a minimum of 664 hours of training. [POST, *Regular Basic Course, Course Formats*, available at: [<http://post.ca.gov/regular-basic-course.aspx.] Over the course of the training, individuals are trained not only on policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes. This requires knowledge of the California Penal code specifically.

3) **Need for Revision of Hate Crime Policy**: According to data from the National Crime Victim Survey by the U.S. Justice Department, hate crimes are significantly underreported. This survey, in comparison to numbers reported to the FBI, suggests that hate crimes likely occur 24-28 times more than they are reported. This underreporting is due in part to a lack of formal training and reporting requirements for local police departments as well as the victim's fear of insensitive treatment by law enforcement. <http://www.lahumanrelations.org/hatecrime/reports/2013_hateCrimeReport.pdf> (as of March 29, 2017)

4) **Hate Crime Reporting in California**: According to the DOJ's 2016 report, Hate Crimes in California, the total number of hate crime events (an occurrence when a hate crime is involved) decreased 34.7 percent from 2007 to 2016. Filed hate crime complaints decreased 30.5 percent from 2006 to 2015. That being said, hate crime events in California have been on the rise; there was a 10.4 percent rise from 2014 to 2015, and then another 11.2 percent rise from 2015 to 2016. The total number of hate crime events, offenses, victims, and suspects had all increased in 2016.

   According to its 2015 report, "The DOJ requested that each law enforcement agency establish procedures incorporating a two-tier review (decision-making) process. The first level is done by the initial officer who responds to the suspected hate crime incident. At the second level, each report is reviewed by at least one other officer to confirm that the event was, in fact, a hate crime." Even with the two-tiered system in place, the DOJ still lists the policies of law enforcement agencies as one of four factors possibly influencing the volume of hate crimes reported. (<https://openjustice.doj.ca.gov/resources/publications> [Feb. 9, 2018].)

   The Los Angeles Police Department (LAPD) website posted its manual (Volume 1, Section 522), which states its general policy, but does not discuss specific procedures. Among other things, it states, "When any act motivated by hatred or prejudice occurs, the Department will ensure that it is dealt with on a priority basis and use every necessary legal resource to rapidly and decisively identify the suspects and bring them to justice." (<http://www.lapdonline.org/lapd_manual/volume_1.htm#522> [Feb. 9, 2018].)

5) **Prior Legislation**:

   a) AB 301 (Chu) of the 2019 Legislative Session was similar to this bill in that it required DOJ to carry out various duties related to documenting and responding to hate crimes,

including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported. AB 301 was held on the Assembly Appropriations Committee suspense file.

b) AB 1052 (Chu) of the 2019 Legislative Session required the POST basic training course on hate crimes to include a specified video, and to make the course available on-line and would have required all peace officers to have viewed the course by 2021.

c) AB 2235 (Gabriel) of the 2020 Legislative Session was similar to this bill in that it required DOJ to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported. AB 2235 was not heard by the Committee due to Covid-19 restrictions

d) AB 2236 (Gabriel) of the 2020 Legislative Session required the Commission on Peace Officer Standards and Training (POST) to develop a peace officer in-service hate crimes refresher course to be taken every five years. AB 2236 was held on the Assembly Appropriations suspense file.

6) **Argument in Support**: According to the *Simon Wiesenthal Center and Museum of Tolerance*, "AB 57 would implement specific recommendations from the State Auditor to better prevent, respond to and document hate crimes in California. Most importantly, AB 57 strengthens existing training requirements for peace officers and requires improved guidance, outreach, data collection and reporting by the DOJ.

In 2018, the California State Auditor released a report with the key finding that law enforcement agencies have not adequately identified hate crimes, responded to them or reported them to the DOJ. The State Auditor recommended that the DOJ provide better guidance to assist local law enforcement agencies with the identification and investigation of hate crimes and with outreach to vulnerable communities.

Since the beginning of the COVID-19 pandemic, hate incidents directed against both the Asian American and Jewish communities have been on rise. The increase in hate-motivated violence and the increase in the number of hate groups have made improving law enforcement's ability to correctly identify and respond effectively to hate crimes a priority."

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-defamation League
Asian Law Alliance
Asian Pacific American Advocates
California League of United Latin American Citizens
California NAACP
Center for The Study of Hate & Extremism - California State University, San Bernardino
Hadassah, the Women's Zionist of America, INC.
Jewish Center for Justice

Jewish Community Federation and Endowment Fund
Jewish Federation of Greater Los Angeles, the
Jewish Federation of Greater Santa Barbara
Jewish Public Affairs Committee
Progressive Zionists of California
San Jose/silicon Valley NAACP
Simon Wiesenthal Center, INC.

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

AMENDMENTS TO ASSEMBLY BILL NO. 57
AS AMENDED IN ASSEMBLY FEBRUARY 25, 2021

Amendment 1
In the heading, in line 4, after "Levine," insert:

Low, Medina,

Amendment 2
In the heading, in line 5, after "Glazer," insert:

Rubio,

Amendment 3
On page 3, between lines 12 and 13, insert:

(e) Many of the estimated 9,000,000 Californians with disabilities, including disabilities caused by aging, are always at high risk of becoming hate crime victims, and antidisability hate crimes in California and nationally are justifiably called the invisible hate crimes. A 2017 United States Bureau of Justice Statistics survey of hate crime victims estimated 40,000 antidisability hate crimes per year. This figure is certainly an underestimation because antidisability hate crime victims often do not recognize that the crimes they suffered were hate crimes, those with serious disabilities often find it difficult or impossible to report the crimes, and the estimate omits crimes in hospices, nursing homes, group homes, prisons, jails, and other institutions. Yet in 2019, law enforcement agencies reported just 177 antidisability hate crimes to the Federal Bureau of Investigation (FBI), less than 0.5 percent of the earlier estimate. In California in 2019, law enforcement agencies reported just 10 antidisability hate crimes.

Amendment 4
On page 3, in line 13, strike out "(e)" and insert:

(f)

Amendment 5
On page 3, in line 13, strike out "Federal Bureau of Investigation's (FBI)" and insert:

FBI's

Amendment 6
On page 3, in line 20, strike out "(f)" and insert:

(g)

Amendment 7
On page 3, in line 24, strike out "(g)" and insert:

(h)

Amendment 8
On page 3, in line 27, strike out "(h)" and insert:

(i)

Amendment 9
On page 3, in line 32, strike out "(i)" and insert:

(j)

Amendment 10
On page 4, in line 1, strike out "(j)" and insert:

(k)

Amendment 11
On page 4, in line 4, strike out "(k)" and insert:

(*l*)

Amendment 12
On page 4, in line 7, strike out "(*l*)" and insert:

(m)

Amendment 13
On page 4, in line 10, strike out "(m)" and insert:

(n)

Amendment 14
On page 4, in line 13, strike out "(n)" and insert:

(o)

Amendment 15
On page 4, in line 20, after the second comma insert:

law enforcement agencies, and academic experts,

Amendment 16
On page 6, in line 1, strike out "commission" and insert:

commission, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, and academic experts, and the Department of Justice,

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 57

AMENDED IN ASSEMBLY FEBRUARY 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL **No. 57**

Introduced by Assembly Members Gabriel and Chiu
(Principal coauthor: Senator Min)
(Coauthors: Assembly Members Bauer-Kahan, Bloom, Friedman, Cristina Garcia, Holden, Levine, *Low, Medina,* Nazarian, Quirk, Ting, and Ward)
(Coauthors: Senators Allen, Glazer, *Rubio,* Stern, and Wiener)

Amendment 1

Amendment 2

December 7, 2020

An act to amend Section 13519.6 of, and to add Section 13016 to, the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Gabriel. Law enforcement: hate crimes.

Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines and a course of instruction and training for law enforcement officers addressing hate crimes. Existing law requires state law enforcement agencies to adopt a framework or other formal policy created by POST regarding hate crimes. Existing law also requires, subject to the availability of adequate funding, the Attorney General to direct local law enforcement agencies to report specified information relative to hate crimes to the Department of Justice.

This bill would require the department to carry out various duties relating to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every 3 years to evaluate the accuracy of hate crime data provided and agencies' hate crime policies, implementing a school-based program in conjunction with school districts and local law enforcement agencies aimed at educating students regarding how to report all suspected hate crimes to prevent future hate crimes, submitting specified hate crime reports to the Federal Bureau of Investigation for inclusion in the national crime repository for crime data, and sending advisory notices to law enforcement agencies when the department determines that hate crimes are being committed in multiple jurisdictions. The bill would also include a statement of legislative findings and declarations.

This bill would additionally require the basic course curriculum on the topic of hate crimes to *be developed in consultation with subject matter experts, as specified, and to* include the viewing of a specified video course developed by POST. The bill would also require POST to make the video available via the online learning portal, and would require all peace officers to view the video no later than January 1, 2023. The bill would require POST to develop and periodically update an interactive refresher course on hate crimes for in-service peace officers, and require officers to take the course every 3 years.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

Page 2

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

Page 3

(a) In 2018, the California State Auditor released a report entitled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes."

(b) The California State Auditor found that despite an increase in hate crimes in California since 2014, law enforcement has not been doing enough to identify, report, and respond to these crimes.

(c) According to the Department of Justice's annual report entitled "Hate Crime in California," law enforcement agencies reported 1,015 hate crimes statewide for 2019, a 4.8 percent decrease from 2018, but far from 2014's historic low of 758.

Page 3

(d) In 2020, the Southern Poverty Law Center tracked 838 active hate groups.

(e) Many of the estimated 9,000,000 Californians with disabilities, including disabilities caused by aging, are always at high risk of becoming hate crime victims, and antidisability hate crimes in California and nationally are justifiably called the invisible hate crimes. A 2017 United States Bureau of Justice Statistics survey of hate crime victims estimated 40,000 antidisability hate crimes per year. This figure is certainly an underestimation because antidisability hate crime victims often do not recognize that the crimes they suffered were hate crimes, those with serious disabilities often find it difficult or impossible to report the crimes, and the estimate omits crimes in hospices, nursing homes, group homes, prisons, jails, and other institutions. Yet in 2019, law enforcement agencies reported just 177 antidisability hate crimes to the Federal Bureau of Investigation (FBI), less than 0.5 percent of the earlier estimate. In California in 2019, law enforcement agencies reported just 10 antidisability hate crimes.

Amendment 3

~~(e)~~

(f) According to the ~~Federal Bureau of Investigation's (FBI)~~ *FBI's* annual hate crime statistics, in 2019, California law enforcement agencies reported more hate crimes nationwide than any other state, accounting for almost 14 percent of all reported hate crimes nationwide, despite comprising only 12 percent of the population, and almost 40 percent more than the second highest reporting state, New York.

Amendments 4 & 5

~~(f)~~

(g) Hate crimes are notoriously underreported, both by victims to law enforcement and by law enforcement to state departments of justice and the FBI, so the actual number of victims and cases is generally unknown.

Amendment 6

~~(g)~~

(h) According to the FBI's 2019 statistics, 11 California cities with populations of at least 100,000 affirmatively reported zero hate crimes in their jurisdictions.

Amendment 7

~~(h)~~

(i) Also according to the FBI's 2019 statistics, only 195 California law enforcement agencies reported at least one hate crime, out of the 692 law enforcement agencies listed on the

Amendment 8

Page 3 Commission on Peace Officer Standards and Training's internet website.

~~(i)~~

(j) The California State Auditor's report found that out of the four law enforcement agencies reviewed, three failed to properly identify some hate crimes. For example, for the years 2014 to 2016, inclusive, the Los Angeles Police Department and the San Francisco State University Police Department failed to correctly identify 11 of the 30 cases the California State Auditor reviewed as hate crimes.

Amendment 9

Page 4 ~~(j)~~

(k) The four law enforcement agencies the California State Auditor reviewed failed to report to the Department of Justice a total of 97 hate crimes—about 14 percent of hate crimes identified.

Amendment 10

~~(k)~~

(l) The California State Auditor's report noted that better proactive guidance and oversight by the Department of Justice will result in improved reporting of hate crime information.

Amendment 11

~~(l)~~

(m) The Department of Justice's current reporting process does not capture the geographic location where each hate crime occurred, but only reports the agency that reported the crime.

Amendment 12

~~(m)~~

(n) Of the 245 law enforcement agencies the California State Auditor surveyed, more than 30 percent stated they do not use any methods to encourage the public to report hate crimes.

Amendment 13

~~(n)~~

(o) The California State Auditor noted that the Department of Justice is "uniquely positioned to provide leadership for law enforcement agencies' response to hate crimes" because of its statutory responsibilities to collect, analyze, and report on hate crimes.

Amendment 14

SEC. 2. Section 13016 is added to the Penal Code, to read:

13016. The Department of Justice shall, in consultation with subject matter experts, including civil rights organizations, *law enforcement agencies, and academic experts,* do the following:

Amendment 15

(a) Maintain and annually update a list of all law enforcement agencies.

(b) Every three years, conduct reviews of all law enforcement agencies to evaluate the accuracy of hate crime data provided and

Page 4 agencies' hate crime policies. During this review, the department shall obtain all of the following:

(1) Hate crime statistical data.

(2) Copies of the law enforcement agencies' hate crime policies.

(3) Information regarding the agencies' community outreach activities on hate crimes, including copies of the agencies' hate crime brochures mandated pursuant to Section 422.92.

(c) Distribute information to all agencies on hate crime reporting procedures in cooperation with the Commission on Peace Officer Standards and Training (POST).

(d) Periodically do outreach to all law enforcement agencies to increase awareness of the department's Hate Crime Rapid Response Team, as necessary.

(e) Add region-specific data fields to the department hate crime database, as recommended by the California State Auditor in the

Page 5 2018 report entitled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes."

(f) Create and provide law enforcement agencies with outreach materials to better engage their communities, to provide updates on local trends relating to and statistics regarding hate crimes committed in their communities, and to provide updates regarding threats in the form of hate crimes in their communities. In complying with this paragraph, the department shall do all of the following:

(1) Provide all outreach materials in the Medi-Cal threshold languages.

(2) Provide guidance and best practices for law enforcement agencies to follow when conducting outreach to vulnerable communities about hate crimes within their jurisdictions. This should include collaboration with city and county human relations and human rights commissions.

(3) Include presentation materials specific to various types of communities historically vulnerable to hate crimes.

(4) Provide the materials described in this subdivision to POST for inclusion in its model policy framework developed pursuant to Section 13519.6.

(g) Implement a school-based program in conjunction with school districts and local law enforcement agencies aimed at educating students on the negative consequences of, and how to

recognize, bias, prejudice, harassment, and violence and report all suspected hate crimes to prevent future hate crimes, as recommended by the report described in subdivision (e).

(h) Submit hate crime reports provided by local law enforcement agencies pursuant to Section 13023 to the Federal Bureau of Investigation for inclusion in the national crime repository for crime data collected for purposes of the Uniform Crime Reporting Program, as required by the Hate Crimes Statistics Act, pursuant to Section 534 of Title 28 of, and Section 41305 of Title 34 of, the United States Code.

(i) Analyze reported hate crimes in various regions of the state and send advisory notices to law enforcement agencies when the department determines that hate crimes are being committed in multiple jurisdictions.

SEC. 3. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The ~~commission~~ *commission, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, and academic experts, and the Department of Justice,* shall develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, has the same meaning as in Section 422.55.

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(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

(1) Indicators of hate crimes.

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

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

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

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

(8) Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crimewaves, and any other future hate crime waves that the Attorney General determines are likely.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b), and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall

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encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

(1) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.

(2) The definition of "hate crime" in Section 422.55.

(3) References to hate crime statutes including Section 422.6.

(4) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

(A) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.

(B) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.

(C) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.

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(D) Providing victim assistance and followup, including community followup.

(E) Reporting.

(d) (1) The course of training leading to the basic certificate issued by the commission shall include the course of instruction described in subdivision (a).

(2) Every state law enforcement and correctional agency, and every local law enforcement and correctional agency to the extent that this requirement does not create a state-mandated local program cost, shall provide its peace officers with the basic course of instruction as revised pursuant to the act that amends this section in the 2003–04 session of the Legislature, beginning with officers who have not previously received the training. Correctional agencies shall adapt the course as necessary.

(e) (1) The commission shall, for any basic course commencing on or after June 1, 2022, incorporate the November 2017 video course developed by the commission entitled "Hate Crimes: Identification and Investigation," or any successor video, into the basic course curriculum.

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(2) The commission shall make the video course described in paragraph (1) available to stream via the learning portal.

(3) Each peace officer shall, on or before January 1, 2023, be required to watch the video described in paragraph (1) via the learning portal.

(4) The commission shall develop and periodically update an interactive refresher course of instruction and training for in-service peace officers on the topic of hate crimes and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crime incidents, and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.

(5) The commission shall require the refresher course described in paragraph (4) to be taken by in-service peace officers every three years.

(f) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

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Date of Hearing: March 23, 2021
Counsel: Matthew Fleming

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

AB 48 (Lorena Gonzalez) – As Amended March 16, 2021

SUMMARY: Prohibits the use of kinetic energy projectiles or chemical agents, as defined, by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards. Specifically, **this bill**:

1) Bans the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse an assembly, protest, demonstration, or gathering unless their use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, and all of the following conditions are met:

   a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed;

   b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used;

   c) Persons are given an objectively reasonable opportunity to disperse and leave the scene;

   d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts;

   e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable;

   f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets;

   g) An objectively reasonable effort has been made to extract individuals in distress;

   h) Medical assistance is promptly procured or provided for injured persons; and,

   i) Kinetic energy projectiles are not aimed at the head, neck or any other vital organs.

2) Requires that if the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize its use.

3) Specifies that audible announcements announcing the intent to use kinetic energy projectiles and chemical agents shall be made from various locations, if necessary, and delivered in

multiple languages, if appropriate.

4) Provides that projectiles shall not be aimed indiscriminately into a crowd or group of persons.

5) Provides that kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

   a) A violation of an imposed curfew;

   b) A verbal threat; or,

   c) Noncompliance with a law enforcement directive.

6) Defines "kinetic energy projectiles" as any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma, including, but not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

7) Defines "chemical agents" as any chemical which can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure, including, but not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray or oleoresin capsicum.

8) Provides that this proposal does not prevent a law enforcement agency from adopting more stringent policies.

9) Provides that this proposal does not apply within any correctional facility of the Department of Corrections and Rehabilitation (CDCR).

10) Requires, beginning January 1, 2023, that each law enforcement agency provide a monthly report to the Department of Justice (DOJ) of all instances in which a peace officer used a kinetic energy projectile or chemical agent that resulted in a reported injury to any person.

11) Specifies that the monthly reports pertaining to the use of a kinetic energy projectile or chemical agent by a peace office that resulted in a reported injury shall include the type of kinetic energy projectile or chemical agent deployed, the number of rounds fired or quantity of a chemical agent dispersed, as applicable, the justification for using a kinetic energy projectile or chemical agent, and whether any person was injured as a result of the kinetic energy projectile or chemical agent deployment.

12) Requires each law enforcement agency to produce monthly reports, instead of annual reports, regarding all of the following incidents:

   a) An incident involving the shooting of a civilian by a peace officer;

   b) An incident involving the shooting of a peace officer by a civilian;

c) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; and,

d) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

13) Requires each law enforcement agency, commencing March 31, 2024, to also annually publish a summary of all the incidents described above.

EXISTING LAW:

1) States that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., 1st Amend.)

2) States that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press. (Cal. Const. Art., I, Sec. 2, subd. (a).)

3) States that the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. (Cal. Const., Art. I, Sec. 3, subd. (a).)

4) Requires the Commission on Peace Officer Standards and Training (POST) to implement a course or courses of instruction for the training of law enforcement officers in the handling of acts of civil disobedience and adopt guidelines that may be followed by police agencies in responding to acts of civil disobedience. (Pen. Code, § 13151.5, subd. (a).)

5) Provides that any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot. (Pen. Code, § 405.)

6) Provides that an "unlawful assembly" occurs whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (Pen. Code, § 407.)

7) Provides that every person who participates in any rout or unlawful assembly is guilty of a misdemeanor. (Pen. Code, § 408.)

8) Provides that every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor. (Pen.Code, § 409.)

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

10) Provides that a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

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

    b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code § 835a, subd. (c).)

11) Defines "deadly force" as any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm. (Gov. Code, § 7286, subd. (a)(1).)

12) Requires each law enforcement agency, beginning January 1, 2021, maintain a policy that provides a minimum standard on the use of force, that includes all of the following:

    a) A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible;

    b) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance;

    c) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer;

    d) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person;

    e) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm;

    f) Procedures for disclosing public records in accordance with existing law;

    g) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents;

    h) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other

officers may have additional information regarding the threat posed by a subject;

i) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force;

j) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased;

k) Comprehensive and specific guidelines for the application of deadly force;

l) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased;

m) Comprehensive and specific guidelines for the application of deadly force;

n) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with existing law;

o) The role of supervisors in the review of use of force applications;

p) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so;

q) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors;

r) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities;

s) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted;

t) Factors for evaluating and reviewing all use of force incidents;

u) Minimum training and course titles required to meet the objectives in the use of force policy; and,

v) A requirement for the regular review and updating of the policy to reflect developing practices and procedures. (Gov. Code, § 7286, subd. (b).)

13) Requires, as of January 1, 2017, each law enforcement agency annually furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

a) An incident involving the shooting of a civilian by a peace officer;

b) An incident involving the shooting of a peace officer by a civilian;

c) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; and,

d) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death. (Pen. Code, § 12525.2, subd. (a).)

14) Defines "less lethal weapon" as any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. (Pen. Code § 16780, subd. (a).)

15) Defines "tear gas" to include any liquid, gaseous or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air. (Pen. Code, § 17240.)

16) Defines "tear gas weapon" to include any shell, cartridge, or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of tear gas; and any revolver, pistol, fountain pen gun, billy, or other form of device, portable or fixed, intended for the projection or release of tear gas, except those regularly manufactured and sold for use with firearm ammunition. (Pen. Code, § 17250.)

17) Allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person's employing agency, purchase, possess, or transport any less lethal weapon or ammunition for any less lethal weapon, for official use in the discharge of the person's duties. (Pen. Code, § 19400.)

18) Makes any person who sells a less lethal weapon to a person under the age of 18 years guilty of a misdemeanor, punishable by imprisonment in the county jail for up to six months or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine. (Pen. Code, § 19405.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: "Numerous protesters, bystanders, and journalists have been maimed and permanently injured by 'less lethal' weapons such as rubber bullets and beanbag rounds at the hands of law enforcement during protests this past year. No one who is simply exercising their right to protest should be scared to face serious injury or death because police officers are indiscriminately firing rubber bullets or harmful chemical agents. AB 48 will set clear standards on when and how these weapons are used by law enforcement in order to increase the safety of Californians exercising their right to assemble and protest."

2) **Police Use of Force, Generally**: When it comes to use of force by law enforcement against a member of the public, the general rule for how much force a law enforcement officer can use in response to a given situation is determined by a reasonableness test. It requires the careful balancing the nature and quality of the force against the countervailing government interest at stake. (*See Graham v. Connor* (1989) 490 U.S. 386, 396.) In other words, was the amount and type of force reasonably necessary in light of the police need to prevent the person from doing whatever it was that they were doing at the time the use of force happened. Three important factors to that test are 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the person is actively resisting arrest or attempting to evade arrest by flight. (*Ibid.*)

   Recently California refined its use of force statutes in order to apply clearer guidance to law enforcement and the public regarding the when the use of deadly force is appropriate. Specifically, AB 392 (Weber), Chapter 170, Statutes of 2019, provided that an officer may use deadly force in order to prevent an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. AB 392 further specified situations in which deadly force would not be appropriate. In addition, the Legislature also passed SB 230 (Caballero), Chapter 285, Statutes of 2019, which required law enforcement agencies to update their training and policies relating to the use of force.

3) **Use of Less-Lethal Crowd Control Weapons**: Mass protests and demonstrations create a tension between competing interests that are fundamental to our society. On the one hand, members of the community enjoy the constitutional freedom of speech and public assembly. On the other, the government has an important interest in maintaining public safety and preventing injury to persons and property. These interests collide against one another when mass protests that begin as peaceful become violent or destructive.

   The primary objective of this proposal is to delineate when and how it is appropriate for law enforcement to deploy "less lethal" weapons, such as kinetic energy projectiles (KIPs) (rubber bullets) and chemical agents (tear gas canisters and pepper spray) against the public when it has gathered during a mass protest or gathering. Current law does not establish statewide standards for the use of "less lethal" measures, but POST has a training manual on crowd control situations that includes training on less lethal munitions and chemical agents. ("Crowd Management, Intervention, and Control," POST, March 2012, available at: https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf [as of March 15, 2021].) The most recent version of the POST manual on crowd management was published in 2012, but according to POST, a new version is expected to be released this year. Although POST provides guidelines for when and how to use KIPs and chemical agents in crowd management and control situations, it is up to the individual law enforcement agencies to develop their own standards and policies for the use of such crowd control tools.

   Kinetic energy projectiles, or "Kinetic Impact Projectiles" (KIP) are ammunition that is shot from a firearm and designed to be less lethal than a traditional lead bullet. One well known example of a KIP is referred to as a rubber bullet. Despite the name, a "rubber bullet" is actually a generic term for a variety of projectiles that are made out of rubber compounds, PVC (polyvinyl chloride), hard plastics, and foam. Some "rubber bullets" contain a metal

core. (Kell, "Are crowd-control weapons dangerous? Very, says UC Berkeley expert," UC Berkley News, June 5, 2020, available at: https://news.berkeley.edu/2020/06/05/are-crowd-control-weapons-dangerous-very-says-uc-berkeley-expert/, [as of March 15, 2021].) Other kinetic energy projectiles include "bean bag rounds" and "cloth-cased shot." Courts have interpreted the use of these kinetic projectiles as falling short of deadly force, despite their ability to cause serious injury and even death if they are used a short range and impact the head or the chest area near the heart. (*See Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1279-80.) Chemical agents, as defined in this proposal, include pepper spray and tear gas canisters. Pepper spray has been described by courts as "intermediate force" in that it is "less severe than deadly force, nonetheless present a significant intrusion upon an individual's liberty interests." (*Young v. County of Los Angeles* (9th Cir. 2011) 655 F.3d 1156, 1161-62.)

A recent research paper compiling the available literature on deaths, injuries and permanent disability from rubber and plastic bullets, as well as from bean bag rounds, shot pellets and other projectiles used in arrests, protests and other contexts was published by experts in the fields of public health, medicine, and epidemiology. (Haar, "Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: a Systematic Review," (2017) BMJ Journals, Vol. 7, Iss. 12, available at: https://bmjopen.bmj.com/content/7/12/e018154, [as of March 15, 2021].) The conclusions of that research were as follows:

> "We find that these projectiles have caused significant morbidity and mortality during the past 27 years, much of it from penetrative injuries and head, neck and torso trauma. Given their inherent inaccuracy, potential for misuse and associated health consequences of severe injury, disability and death, KIPs do not appear to be appropriate weapons for use in crowd-control settings. There is an urgent need to establish international guidelines on the use of crowd-control weapons to prevent unnecessary injuries and deaths." (*Ibid.*)

The same group of experts that published the research paper on KIPs in crowd control scenarios, did a similar report on chemical agents. (Haar, "Health Impacts of Chemical Irritants Used for Crowd Control: a Systematic Review of the Injuries and Deaths Caused by Tear Gas and Pepper Spray," (2017) BMC Public Health, Vol. 17, Art. 831, available at: https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-017-4814-6, [as of March 15, 2021].) The conclusions generated as a result of that research were: "Although chemical weapons may have a limited role in crowd control, our findings demonstrate that they have significant potential for misuse, leading to unnecessary morbidity and mortality. A nuanced understanding of the health impacts of chemical weapons and mitigating factors is imperative to avoiding indiscriminate use of chemical weapons and associated health consequences." (*Ibid.*)

The use of chemical agents has drawn particular criticism during the COVID-19 pandemic. According to a United States Army study done in 2014, recruits that were exposed to CS gas were much more likely to contract acute respiratory illness such as the cold and the flu. (Hout, "O-chlorobenzylidene malononitrile (CS riot control agent) associated acute respiratory illnesses in a U.S. Army Basic Combat Training cohort," Mil Med. July 2014, Vol. 179, Iss. 7, available at: https://academic.oup.com/milmed/article/179/7/793/4259353, [as of March 16, 2021].) In the nationwide demonstrations that followed the police killings of George Floyd and other black Americans, protesters were frequently pepper-sprayed or

enveloped in clouds of tear gas. Critics denounced the use of tear gas and pepper spray on large groups of people during the global crisis as a recipe for disaster. (Stone, "Tear-Gassing Protesters During An Infectious Outbreak Called 'A Recipe For Disaster," NPR, June 5, 2020, available at: https://www.npr.org/sections/health-shots/2020/06/05/870144402/tear-gassing-protesters-during-an-infectious-outbreak-called-a-recipe-for-disast, [as of March 16, 2021].)

4) **The Limitation on the Use of KIPs and Chemical Agents**: Given the injuries resulting from the use KIPs and chemical agents as well as the criticisms of such practices, it may be beneficial to establish minimum statewide standards and policies for their use. This bill would place limitations on when and how KIPs and chemical agents may deployed against a crowd by law enforcement. Specifically, this bill would require that KIPs and chemical agents only be used to disperse an assembly, protest, demonstration, or gathering if their use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer. In addition, this bill would require a number of efforts to be made in order avoid the use of KIPs or chemical agents altogether, or to limit their potential for serious injury once deployed. For example, this bill seeks to require attempted de-escalation, repeated, audible announcements regarding the intent to use kinetic energy projectiles and chemical agents, and an opportunity for crowd participants to leave the scene.

   Requiring officers to refrain from the use of KIPs and chemical agents until there is a life-endangering threat, or a threat of serious bodily injury may prove problematic. Mass-protests are often fluid and chaotic situations. Once law enforcement recognizes a legitimate threat of death or serious bodily injury, it may be too late for them to comply with the various mitigating requirements envisioned in the bill, such as de-escalation techniques, audible announcements of the intent to use rubber bullets or tear gas, and an opportunity for participants to disperse. Officers could be put in a situation where they face unenviable choice of either complying with the law, or immediately and adequately responding to a life-threating situation.

   Furthermore, the standard for the use of KIPs and chemical agents set forth in this bill is very close to the standard for the use of deadly force, revised last year in AB 392. Under AB 392, an officer may use deadly force when it is objectively reasonable to defend against an *imminent* threat of death or serious bodily injury to the officer or to another person. An "imminent threat" is defined in AB 392 as circumstances where "a reasonable officer would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

   Although not every threat is an imminent one, many will be in the chaotic setting of an escalating mass protest, where hundreds or even thousands of people are crowded together and tensions are running high and hot. As drafted, this bill would require police to take more mitigating actions prior to using less-lethal force, such as tear gas and rubber bullets, to respond to an imminent threat or death or serious bodily injury, than they would if they were to simply respond with deadly force. In other words, this proposal may make it simpler and easier for officers to respond to a threat by firing lethal, lead ammunition from their service

weapon, instead of taking the appropriate steps to fire ammunition designed to be less lethal, such as KIPs.

As a final consideration, both the Courts and research experts have distinguished the severity of level of force that are presented by KIPs and chemical agents. The Ninth Circuit Court of Appeals founds that the force produced by cloth-cased shot (a type of KIP) "was obviously enough to cause grave physical injury. It knocked [the person] off his feet, and removed one of his eyes. The force applied through use of the cloth-cased shot can kill a person if it strikes his head or the left side of his chest at a range of under fifty feet. Such force is much greater than that applied through the use of pepper spray or a painful compliance hold." (*Deorle*, 272 F.3d at 1279.) The research supports distinctions in the level of force from KIPs and chemical agents as well. (*See* Haar, *supra*, examining the injuries caused from both KIPs and chemical agents and drawing distinct conclusions about the appropriateness of their use for crowd-control.) This proposal, however, applies most of the same standards and procedures to both KIPs and chemical agents. Therefore, it may be worth considering separate guidelines and procedures for these measures based on their varying levels of force.

5) **Increased Reporting of Use of Force Incidents**: A separate provision of this bill deals with the existing requirement that California law enforcement agencies submit annual reports to the Department of Justice (DOJ) regarding police shootings and use of force incidents that result in serious bodily injury or death. Current law requires law enforcement agencies to submit a yearly report to the DOJ on any shootings of civilians by peace officers and vice versa, as well as violent interactions between civilians and peace officers that result in death or serious bodily injury, even if no firearm was used. This bill would increase to the frequency of this report from once per year to once per month. It would also add the use of KIPs or chemical agents that results in any injury to the reporting requirements. In addition to the monthly report, under the provisions of this bill, law enforcement agencies would be required to submit a yearly summary report to the DOJ as well.

6) **Arguments in Support**:

   a) According to the bill's co-sponsors, the *California News Publisher's Association, California Broadcasters Association, California Black Media, Ethnic Media Services, and the First Amendment Coalition*: "The widespread use of rubber bullets and tear gas against protesters following the death of George Floyd, have made it clear that limitations on the use of these tactics are necessary. AB 48 will protect the public, and the press, who are almost always among the public, covering these demonstrations, and are also harmed when these tactics are used to disperse those protesting, by limiting the circumstances that kinetic energy projectiles, such as rubber bullets, and chemical agents. The prohibition against the use of these serious and often harmful weapons simply to disperse a crowd or for violation of an imposed curfew, frequently used to bring an end to protests, will ensure that police give pause before using these "non-lethal" methods.

   "Further, this bill will enhance the press's ability to cover these demonstrations and the use of rubber bullets and tear gas by police by requiring departments to report: what kinetic energy projectiles or agents chemicals are used; the number of rounds or quantity of gas used; the justification for the use of these tactics; and the injuries resulting from the use of kinetic energy projectiles and chemical agents.

"By requiring these reports, the press can follow up on the aftermath of demonstrations with accurate information on the use of these tactics against the public. This reporting will in turn better inform the public debate on issues of importance, such as police brutality.

"In California and across the country police have arrested, detained, and have physically assaulted journalists with rubber bullets, pepper spray, tear gas, batons, and fists. In many cases there are strong indications that the officers injuring journalists knew their targets were members of the press.

"The following incidents show the blatant disregard for the safety of journalists engaged in constitutionally protected activities by law enforcement during protest activities within the last year:

- San Diego Union-Tribune reporter Andrew Dyer was shot with pepper balls while he was documenting protests in La Mesa, California, on May 31, 2020.
- Cerise Castle, a reporter for National Public Radio's Santa Monica affiliate, KCRW, was shot with a rubber bullet while holding her press badge above her head. She said she was shot by an LAPD officer with whom she had just locked eyes;

- Jintak Han, a photographer and reporter with the University of California at Los Angeles's student newspaper, the Daily Bruin, was shot at with rubber bullets as he tried to return to his car after covering protests. He was wearing his press pass, a white helmet, a vest emblazoned with "PRESS" and was carrying three cameras;

- Adolfo Guzman-Lopez, a clearly identifiable radio journalist with KPCC in Los Angeles, was shot in the throat with a rubber bullet while covering protests in Long Beach, leaving a bloody red welt. "I felt it was a direct hit to my throat," the radio reporter said.

- In Minneapolis, Molly Hennessy-Fiske, a Los Angeles Times reporter, and Carolyn Cole, a Los Angeles Times photographer (also with a "press" flak jacket), had to escape over a wall after being gassed and shot with rubber bullets at point blank range.

"AB 48 (Gonzalez) protects the public and the press two-fold, first by limiting the circumstances these weapons and tactics can be used, and then requiring the reporting of when, how, why, and the injuries that resulted from their use. The monthly reporting requirement will better enable the press to accurately report on the aftermath of demonstrations and how police are responding to them."

b) According to the *National Association of Social Workers*: "While most police departments have their own policies on their use of force of these 'less lethal' weapons, there are no statewide or national standards. There have been numerous reports of peaceful protestors, bystanders, health care professionals, and reporters, seriously injured

by kinetic projectiles like rubber bullets or beanbag rounds fired by law enforcement and chemical agents used against protesters. In fact, the U.S. Crisis Monitor found that 93 percent of racial justice protests were peaceful, yet police were five times more likely to respond with force to these protests than the anti-lockdown protests.

"The use of these "less-lethal" weapons can cause serious injury and long-term health impacts when used improperly by law enforcement. When fired at a closer range, as seen in many of the recent protests, rubber bullets can penetrate the skin, break bones, fracture the skull, explode the eyeball, cause traumatic brain injuries, serious abdominal injury, internal bleeding and spleen, bowel, and major blood vessel injuries. At longer distances, they can unintentionally injure bystanders and non-violent demonstrators instead.

"Chemical agents also have significant health impacts. Tear gas and pepper spray irritates cells, but also activates pain receptors, which leads to intense burning pain in the eyes, throat, lungs, skin and mucous membranes. Tear gas in particular is by design indiscriminate and can affect not only the intended targets but also peaceful demonstrators, bystanders and nearby communities and residences as well. In addition, a 2014 study from the U.S. Army found that recruits who were exposed to tear gas as part of a training exercise were more likely to get sick with respiratory illnesses like the common cold and flu.

"Medical professionals have called for an end to the use of rubber bullets and similar projectiles, as well as an end to the use of tear gas on peaceful protestors due to their potential to cause serious injury, disability, or death. It is clear that these "less lethal" weapons are inappropriate for crowd control as Californians are exercising their rights to assemble and peacefully protest."

7) **Argument in Opposition**:

a) According to the *California State Sheriffs' Association*: "Restricting the use of less-lethal options limits the tools that are at an officer's disposal to protect public safety. Different circumstances may call for different responses and more or less force may be required. However, by restricting when an officer may use those tools, their response to a particular situation may end up being guided by choices about practices that may be acceptable or unacceptable to some instead of what measure is most appropriate in the context of the event.

"We are also concerned about mandating specific tactics directly in statute as AB 48 would. Again, it is difficult to legislate around situations that are rarely identical, and a "standard" approach may neglect a situation's unique features and the training of peace officers to assess and respond to these events. Experienced law enforcement practitioners and regulators are better positioned to set out guidelines through policy that steer officer practices and recognize the fluidity of situations that are prone to rapid evolution.

"Finally, additional use of force reporting will add workload and costs that are not accounted for in this bill. For this reason, and those stated above, we must respectfully oppose AB 48."

b) According to the *California Statewide Law Enforcement Association*: "While we certainly understand and appreciate the author's intent to ensure protestors are protected under the First Amendment of the United State Constitution, we must respectfully oppose this measure, which could have very significant unintended consequences should the state place limit the ability of law enforcement to utilize non-lethal weapons used to disperse crowds that are not complying with law enforcement directives. Additionally, the Legislature should be very careful when removing non-lethal tools from law enforcement officers. Further, law enforcement agencies already have the ability to set policies that allow – or disallow – the use of non-lethal weapons."

8) **Prior Legislation**:

a) AB 66 (Gonzalez), of the 2019 – 2020 Legislative Session, was nearly identical to this bill, except that it would have allowed the use of rubber bullets and tear gas in situations where it was necessary to protect against all injuries, rather than just situations necessary to protect against a threat to life or serious bodily injury. AB 66 was ordered to the Senate inactive file by unanimous consent.

b) AB 392 (Weber), Chapter 170, Statutes of 2019, revised the standards for use of force by police officers.

c) SB 230 (Caballero), Chapter 285, Statutes of 2019, required requires law enforcement agencies to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents

d) AB 1237 (Leno), of the 2005 – 2006 Legislative Session, would have required every law enforcement agency to report to the DOJ, specified information about the use of tasers by each agency. AB 1237 failed passage on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance San Diego
Asian Solidarity Collective
California Attorneys for Criminal Justice
California Black Media
California Broadcasters Association
California Faculty Association
California News Publishers Association
California Nurses Association
California Public Defenders Association (CPDA)
California State PTA

California Teachers Association
Change for Justice
Consumer Attorneys of California
County of Los Angeles Board of Supervisors
Ethnic Media Services
First Amendment Coalition
National Association of Social Workers, California Chapter
Oakland Privacy
Pillars of The Community
San Francisco Public Defender
SEIU California
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County
Team Justice
Think Dignity
We the People - San Diego

Oppose

California Coalition of School Safety Professionals
California Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Palos Verdes Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Southwest California Legislative Council

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