California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, March 7, 2023
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 15	Dixon	Public records: parole calculations and inmate release credits.
2.	AB 61	Bryan	Criminal procedure: arraignment.
3.	AB 93	Bryan	Criminal procedure: consensual searches.
4.	AB 97	Rodriguez	Firearms: unserialized firearms.
5.	AB 257	Hoover	Encampments: penalties.
6.	AB 327	Jones-Sawyer	Criminal justice: crime statistics.
7.	AB 328	Essayli	Sentencing: dismissal of enhancements.
8.	AB 330	Dixon	Domestic violence: victim's information card.
9.	AB 335	Alanis	Proposition 47: repeal.
10.	AB 353	Jones-Sawyer	Incarcerated persons: access to showers.
11.	AB 355	Alanis	Firearms: assault weapons: exception for peace officer training.
12.	AB 360	Gipson	Excited delirium.
13.	AB 390	Haney	Commission on Peace Officers Standards and Training: assessment of training requirements.
14.	AB 399	Ting	Vehicles: police pursuit data reporting.

COVID FOOTER

SUBJECT:

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

Date of Hearing: March 7, 2023
Counsel: Andrew Ironside

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

AB 15 (Dixon) – As Amended February 28, 2023

SUMMARY: States that California Department of Corrections and Rehabilitation (CDCR) records pertaining to an inmates release date and what an inmate did to earn release credits are public records subject to disclosure under the California Public Records Act (CPRA). Specifically, **this bill**:

1) States that CDCR records pertaining to an inmate's release date and what the inmate did to earn any release credits are public records subject to disclosure under CPRA.

2) Requires disclosure to be sufficiently detailed and include the number of days of credit that were based on each of the following categories:

   a) Good behavior;

   b) Rehabilitation and education program participation; and,

   c) Pretrial release credits.

3) Requires disclosure to include the types of rehabilitative and education programs that the inmate participated in and completed.

4) Provides that CDCR is not required to disclose records that are subject to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

EXISTING LAW:

1) Provides that all people are by nature free and independent and have inalienable rights, including privacy. (Cal. Const., Art. I, § 1.)

2) Provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., Art. I, § 3, subd. (b)(1).)

3) Defines "public records" to include any writing containing information relating to the conduct of the public's business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 7920.530.)

4) Declares that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a

fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

5) Provides that the inalienable right to privacy under the California Constitution may exempt certain records, or portions thereof, from disclosure under the California Public Records Act. (Gov. Code, § 7930.000.)

6) Provides that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

7) Defines "criminal offender record information" as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 13102.)

8) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000.)

9) Provides for a right of access to criminal offender record information by any person or public agency authorized by law. (Pen. Code, § 13200.)

10) Provides that the right of access to criminal offender record information does not authorize access of any person or public agency to such information unless such access is otherwise authorized by law. (Pen. Code, § 13201.)

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

12) Provides that criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statutes. (Pen. Code, § 11076.)

13) Requires CDCR to establish written guidelines for accessibility of records, to post those guidelines in a conspicuous public place at CDCR offices, and to make a copy of the guidelines available upon request free of charge to any person requesting them. (Gov. Code, § 6253.4(b)(5).)

14) Provides that any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to inspect or receive a copy of any public record or class of public records. (Gov. Code, § 7923.)

15) Requires CDCR to establish written guidelines for accessibility of records. (Gov. Code, § 7922.635, subd. (a)(6).)

16) Provides that an inmate, unless otherwise precluded, is eligible to receive good conduct, rehabilitation, and/or education credits to advance the inmate's release date if sentenced to a determinate term or to advance an inmate's initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (Pen. Code, §§ 2931, 2933 & 2933.05; see also 15 CCR § 3043.4, *et. seq.*)

17) Provides that, in addition to other specified limitations, the only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public includes that inmate's or parolee's:

a) Name;

b) Age;

c) Race and/or ethnicity;

d) Birthplace;

e) County of last legal residence;

f) Commitment offense;

g) Date of admission to CDCR and CDCR number;

h) Facility assignments and a general description of behavior;

i) Patient health condition given in short and general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined;

j) Manner of death as natural, homicide, suicide, accidental, or executed; and,

k) Sentencing and release actions, including month and year of current parole eligibility date. (15 CCR § 3261.2(e)(1)-(11).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In recent news, we have seen cases of violent, convicted felons who were released early from their prison sentences, and who then went on to commit more violent felony offenses against the public. In many of these cases, the Department of Corrections and Rehabilitation (CDCR) has refused to disclose information as to how those inmates obtained their early release credits. It is vital to the creation of a fair and just system for all Californians, that we have a transparent criminal justice system. AB 15 will provide that CDCR records pertaining to an inmate's early release date and how they earned their early release credits are available to the public, and are subject to disclosure under the California Public Records Act. AB 15 will create more transparencies to ensure that CDCR is properly applying the law, to help Californian's feel

safe in their communities and to create just outcomes for all."

2) **Proposition 57:** On November 8, 2016, Californians voted on whether to increase rehabilitation services and decrease the state's prison population by approving Proposition 57. Known as The Public Safety and Rehabilitation Act of 2016, Proposition 57 proposed, among other things, to authorize CDCR to award sentence credits for rehabilitation, good behavior, and education. It would require CDCR to pass regulations to that effect. (https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf.) Voters approved Proposition 57 by a margin of nearly 30 points. (https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).) And, as required, CDCR has since issued regulations to effectuate the proposition's purpose. (Cal. Const., Art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*)

   This bill would make information related to release credits earned by incarcerated persons subject to disclosure under the CPRA. Proponents claim that this disclosure is necessary because CDCR has "potentially endanger[ed] Californians" by "releasing large numbers of inmates early" under Proposition 57. However, according to the most recent data, the violent crime rate in California is lower today than it was when voters approved Proposition 57, when violent crime was already historically low. (https://www.ppic.org/publication/crime-trends-in-california/.) Similarly, in 2020, the property crime rate in California reached its lowest level since 1960. And, while it ticked up by 2.4% in 2021, it remains low. (*Ibid.*)

18) **California Public Records Act (CPRA):** The CPRA provides that every person or entity in California has a right to access information concerning the conduct of the people's business. (Gov. Code, §7921.000; Cal. Const., Art. I, § 3, subd. (b)(1).) Despite the public's fundamental right to access public records, the California Constitution also provides people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., Art. I, § 1.) The CPRA provides that the inalienable right to privacy under California Constitution may exempt certain records, or portions thereof, from disclosure under the Act. (Gov. Code, §7930.000.) It specifically states that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

   If an agency rejects a public records request, the CPRA requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Civ. Code, § 7922.000.) Any person may challenge an agency's rejection of a CPRA request by instituting proceedings for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to inspect or receive a copy of any public record or class of public records. (Gov. Code, § 7923.)

   CDCR has issued regulations governing the disclosure of information relating to an incarcerated person. Specifically, CDCR regulations state, "[T]he only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public" includes their name, age, race and/or ethnicity, birthplace, count of last legal residence, commitment offense, date of admission, facility assignment, a general description of behavior, a short and general description of an inmate's health or manner of

death, and the month and year of their release. (15 CCR § 3261.2(e)(1)-(11).)

This bill would require CDCR to disclose significantly more information than is likely required under the CPRA, and which appears to be protected.

3) **Institutional Safety at CDCR Facilities:** This bill would make "[CDCR] records pertaining to an inmate's release date and what the inmate did to earn any release credits…subject to disclosure" under the California Public Records Act (CPRA). This bill provides no exceptions to or restrictions on disclosure, other than for records protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Nor does this bill exempt from disclosure an incarcerated person's release credit information before that person's release date has been set. Even if the date has been set, an incarcerated person is not immediately released upon receiving that date. In either case, a person could request information on an incarcerated person's rehabilitative efforts and then communicate that information to another incarcerated person within the same institution.

   For example, an incarcerated person may receive "up to twelve months of Extraordinary Conduct Credit" for "provid[ing] exceptional assistance in maintaining the safety and security of a prison." (Pen. Code, § 2935; 15 CCR § 3043.6, subd. (a).) Disclosure that an incarcerated person assisted corrections staff may put that person at risk from other incarcerated persons, particularly if the provided information resulted in consequences for other incarcerated persons. Given the ongoing efforts by CDCR to manage security threat groups ("gangs") and other security threats within its institutions, there may be reason for concern that such broad disclosures would threaten institutional safety and the safety of the people in CDCR's care. Similarly, it could also put the individual in immediate risk from persons who are not incarcerated, such as members of rival gangs, once they are released from prison.

4) **A Disincentive to Participate in Rehabilitative Programming:** As mentioned above, this bill provides broad disclosure on what an incarcerated person did to earn release credits before that person has been released from CDCR, which may place that person at risk. Moreover, this bill requires disclosure of "the types of rehabilitative and education programs that the inmate participated in and completed." This likely would require the disclosure of information about any rehabilitation credits an incarcerated person earns for participation in self-help and peer support groups, such as Narcotics Anonymous and/or Alcoholics Anonymous among others. If earning credits could result in disclosure of an incarcerated person's personal information or might threaten their personal safety, will they be disincentivized to participate in rehabilitative programming?

5) **Vague Language:** This bill provides that "[a] disclosure…shall be sufficiently detailed and include the number of days of credit…," but it does not provide guidance to CDCR on the records, or the portions of records, that would be required to meet that standard. Given that the bill requires that disclosures be both "sufficiently detailed *and* include the number of days of credit…," disclosure would have to go beyond a cursory calculation of the total credit days an incarcerated person has earned. But what level of detail is "sufficient[]" to comply with this bill's mandate? Would CDCR have to report the number of Narcotics Anonymous meetings an incarcerated person attended while in custody? Would CDCR have to report that an incarcerated person received credit for providing information that helped thwart a threat to institutional security? (See 15 CCR § 3043.6, subd. (a).) Would CDCR have to report the

content of the information that person provided? The bill's language does not resolve these questions.

6) **Argument in Support**: According to the *California District Attorneys Association*: "As you well know, the California Department of Corrections and Rehabilitation has been releasing large numbers of inmates early, potentially endangering Californians. CDAA is very concerned that the process through which this is done remains, in many cases, a mystery. Your bill will help us all understand better what is happening."

7) **Argument in Opposition**: According to the *Transformative In-Prison Workgroup*: "We believe California has made significant progress enacting progressive reforms to reduce wasteful prison spending, and expanding rehabilitation and other alternatives that have proven to effectively reduce and prevent crime in a more cost-efficient manner. These reforms were in response to a steady rise in incarceration rates and the undeniable presence of racial, gender, and socio-economic disparities. Specifically, Proposition 57, entitled "Public Safety and Rehabilitation Act" empowered the CDCR to increase prison credits earned by incarcerated people for completing rehabilitative programs. This proposition was overwhelmingly supported by Californians. First, because Californians want safer communities and neighbors. Second, because as a recent survey from Californians United for Safety and Justice illustrates, the majority of survivors of crime say the state should be more focused on rehabilitating people who commit crimes versus punishment. Lastly, because no life sentenced incarcerated person is automatically released or entitled to release from prison under Proposition 57. To be granted parole, all life sentenced incarcerated people must demonstrate that they are rehabilitated and do not pose a danger to the public to earn their release through the parole board hearing process.

   "Sound rehabilitative programming is empirically proven to reduce recidivism, increase public safety, and improve reentry outcomes. Rehabilitative programming in California prisons provides the incarcerated population with reentry support, skills and workforce development, as well as trauma healing and restorative justice programs, AB 15 (Dixon) dangerously suggests that this programming is inadequate.

   "We are also extremely troubled by the obvious underlying intent of AB 15 (Dixon), which appears to be nothing more than seeking to capitalize on tragedy and instill fear in the public. These are the failed approaches to crime and imprisonment that Californians have rejected. It would be a massive mistake to move backwards into the demagoguery and grandstanding that helped to create the system of mass incarceration."

8) **Related Legislation**: AB 1260 (Joe Patterson), would require CDCR to make an initial determination of the minimum eligible parole date for an inmate based on the sentence of the court, any credits awarded, and the good conduct credit rate, as specified. AB 1260 is pending hearing in this committee.

9) **Prior Legislation**: SB 345 (Bradford), of the 2017-2018 Legislative Session, would have required CDCR, among others, to the extent not prohibited by the CPRA, to conspicuously post on their Internet website, in a searchable manner, all current standards, policies, practices, operating procedures, and education and training materials. Governor Brown vetoed SB 345.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

1 Private Individual

Opposition

California Attorneys for Criminal Justice
Ella Baker Center for Human Rights
Initiate Justice
The Transformative In-prison Workgroup
California Public Defenders Association (CPDA)

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

Date of Hearing: March 7, 2023
Counsel: Mureed Rasool

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

AB 61 (Bryan) – As Amended February 23, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires that a person must be taken before a court without unnecessary delay, and, at the most, within 48 hours of their arrest. Specifically, **this bill**:

1) Requires that a person in custody be taken to a court without unnecessary delay, and in any event, within 48 hours of their arrest inclusive of weekends and holidays.

2) States that promptly after a warrantless arrest, but no more than 48 hours after, a court must review the basis for the arrest to determine whether probable cause exists that an offense was committed and the arrestee had committed it.

3) States that if a probable cause determination has not been made within 48 hours, the prosecution must demonstrate the existence of a bona fide emergency or other extraordinary circumstance.

4) Provides that a probable cause determination for a warrantless arrest may be based on sworn statements from the arresting officer and may be conducted in chambers, remotely, or in conjunction with an arraignment or custodial status hearing.

5) Requires, upon a court finding there was no probable cause to warrant the arrest, the court to immediately order the person's release and to convey the order to the custodial officer.

6) Requires a court to make a record of the probable cause determination including the time of arrest, time that the determination was made, and to place it in the court file.

7) States that a warrantless arrest probable cause determination shall not bind a court in a preliminary hearing or any other future evidentiary proceeding to determine the existence of probable cause.

8) Provides that a minor must be released within 48 hours after being taken into custody if no probable cause determination has been made except in cases when the minor willfully misrepresents themselves to be an adult.

9) Outlines the process for making a probable cause determination in the juvenile context and states that the probable cause determination may be held concurrent to other specified judicial actions.

EXISTING LAW:

1) Requires that a person charged with a felony complaint must be taken without unnecessary delay before a magistrate of the court in which the complaint was filed and be arraigned. (Cal. Const., Art. I, § 14.)

2) Provides that a defendant arrested pursuant to a warrant must be taken before a magistrate without unnecessary delay, and in any event, within 48 hours after arrest excluding Sundays and holidays. For a defendant arrested on a Wednesday when court is not in session, and if it does not occur during a court holiday, the defendant must be taken to the magistrate no later than the following Friday, if the Friday is not a court holiday. (Pen. Code, § 825, subd. (a).)

3) States that a defendant arrested without a warrant and kept in custody must be taken to a magistrate without unnecessary delay, and a complaint stating the charge must be laid before such magistrate. (Pen. Code, § 849, subd. (a).)

4) Provides that the presiding judge of the superior court in a county must designate one judge to be reasonably available on call when court is not in session, for purposes of custody discharges, issuance of search warrants, and other appropriate matters. (Pen. Code, § 810.)

5) Makes it a misdemeanor for any public officer or other person who has arrested an individual for a criminal charge to willfully delay taking the arrestee to a magistrate. (Pen. Code, § 145.)

6) Authorizes the Chairperson of the Judicial Council, in the event of war, terrorism, natural disaster, epidemic, or other calamity, to allow a court to declare an emergency. The days in which an emergency is declared would constitute holidays for purposes of when a person must be taken before a magistrate or the court. (Gov. Code, § 68115, subd. (a)(5).)

7) States that an arraignment must be generally made by the court and consists of reading the accusatory pleading to the defendant, delivering them a copy, and inquiring as to whether the defendant pleads guilty or not guilty. (Pen. Code, § 988.)

8) States that when a defendant first appears for arraignment the magistrate must immediately inform them of the charges and of their right to counsel. (Pen. Code, § 858, subd. (a).)

9) States that a defendant charged with the commission of a felony by written complaint shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file and that the magistrate must deliver a copy of the complaint, inform of the right to assistance of counsel, and inquire into whether the defendant desires counsel. (Pen. Code, § 859.)

10) States that a defendant must be arraigned in the court in which the accusatory pleading is filed unless the action is transferred to another court for purposes of trial, however, in-custody defendants may be arraigned in the court nearest to their location if the presiding judge from the pleading county and the presiding judge from the nearest location county both approve. Also gives a defendant the right to be taken in front of a magistrate in the arresting county for purposes of bail, as specified. (Pen. Code, § 976, subds. (a) & (b).)

11) Requires a court arraigning a defendant on an indictment or information to set them aside if no probable cause exists. (Pen. Code, § 995.)

12) Outlines the probable cause procedure in misdemeanor cases for a defendant who is in custody when appearing for arraignment, and who has pled not guilty, as specified.

    a) Requires the magistrate, upon motion by the defendant or defendant's counsel, to make a probable cause determination.

    b) States that the probable cause determination must be made immediately unless the court finds good cause to continue for a period of no more than three court days.

    c) Requires the magistrate, when determining the existence of probable cause, to consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference that state the basis for such information.

    d) Provides that if a magistrate finds probable cause does exist it has to set the matter for trial and if it finds no probable cause exists, it must dismiss the complaint and discharge the defendant.

    e) Allows the prosecution to refile a complaint within 15 days of the dismissal and states that a subsequent dismissal due to lack of probable cause shall be a bar to any other prosecution for the same offense. (Pen. Code, § 991.)

13) Provides a court with jurisdiction over a minor by adjudging them a ward of the court if they violated specified local, state, or federal laws aside from a curfew ordinance based solely on age. (Welf. & Inst. Code, § 602.)

14) States that a peace officer may take a minor into temporary custody without a warrant if, among other things, the peace officer has reasonable suspicion to believe the minor committed a certain offense. (Welf. & Inst. Code, § 625.)

15) Requires a peace officer to take a minor to the probation officer without unnecessary delay and prepare a concise probable cause statement to deliver to the probation officer if there is no lesser restrictive alternative that is compatible with the best interests of the minor and the community. (Welf. & Inst. Code, § 626, subd. (d).)

16) Requires the probation officer taking custody of the minor to immediately investigate the circumstances of the minor and facts surrounding their custody, and immediately release the minor to their family unless one or more of the following can be demonstrated in court:

    a) Continued detention is an urgent necessity for the protection of the minor or reasonable necessity for the protection of a person or their property.

    b) The minor is likely to flee the jurisdiction of the court.

    c) The minor has violated a juvenile court order. (Welf. & Inst. Code, § 628, subd. (a).)

17) States that a minor taken into custody must be released within 48 hours, excluding non-judicial days unless a petition to declare the minor a ward or a criminal complaint has been filed. (Welf. & Inst. Code, § 631, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 61 will update the arraignment timeline to remove exceptions to the 48 hour rule, and ensure that a judge promptly reviews every warrantless arrest for probable cause. Currently, Sundays and holidays are not accounted for in the 48 hour rule and, as a result, people who are arrested can be held in jail for more than four days without seeing an attorney.

   "In 2021, prosecutors rejected over 20,000 felony arrests for lack of sufficient evidence, yet these people can be detained without ever seeing a judge for well beyond the statutory requirement. Thirteen states - including Texas, Florida, and Alabama - require an arraignment hearing within 48 hours of arrest without any exceptions.

   "These changes will ensure that people who have not formally been charged with any wrongdoing have their prompt judicial review so that their housing, employment, and family stability are not unjustly jeopardized."

2) **Probable Cause Requirements for Warrantless Arrests:** In *Gerstein v. Pugh* (hereafter *Gerstein*) (1975) 420 U.S 103, the U.S. Supreme Court held that the 4th Amendment right to due process requires that a person arrested without a warrant receive a "prompt" probable cause determination from an impartial magistrate. Probable cause is the standard used to determine whether an officer can justifiably arrest an individual. (*Id.* at 112.) It has been defined as, "facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.' " (*Id.* at 111.) One of the principles driving the Supreme Court to ensure a magistrate reviews an arrestee's case for probable cause is because a magistrate is more neutral and detached than an officer who is often engaged in the competitive enterprise of apprehending criminals. (*Gerstein, supra,* at 112-13 [quoting *Johnson v. United States*, (1948) 333 U.S. 10, 13-14].)

   Subsequently, the California Supreme Court decided, in the case of *In re Walters* (1975) 15 Cal.3d 738, that *Gerstein* was binding on California and applied to misdemeanors as well as felonies. Two decades later, the U.S Supreme Court refined its *Gerstein v. Pugh* decision by holding, in *County of Riverside v. McLaughlin* (hereafter *McLaughlin*) (1991) 500 U.S. 44, that "prompt" means a person in custody pursuant to a warrantless arrest must be given a probable cause determination without unreasonable delay, and in any case, within 48 hours, unless there was an exigency or emergency.

   In the juvenile context, the California Supreme Court decided that *McLaughlin's* 48 hour rule did not apply, and instead juvenile detainees are only entitled to judicial probable cause determination within 72 hours of arrest. (*Alfredo A. v. Superior Court* (hereafter *Alfredo*) 6 Cal. 4th 1212, 1216.) The *Alfredo* court reasoned that although juveniles hold certain basic constitutional protections enjoyed by adults, that juveniles are always in some form of custody, and when the legal guardian's custody fails, the government must exercise custody

itself or appoint someone to do so. (*Id.* at 1225, 1228.) The *Alfredo* court also noted juvenile proceedings are fundamentally different from adult criminal proceedings and contained an inherent need for informality and flexibility. (*Id.* at 1215.) It finally concluded that the need for flexibility in juvenile proceedings, in combination with juveniles' reduced constitutional rights, meant that *McLaughlin's* 48 hour rule did not apply in the juvenile context and a probable cause determination within 72 hours of arrest was constitutional. (*Id.* at 1231-32.)

One of the dissenting opinions in the *Alfredo* case pointed out the informality and flexibility inherent in juvenile proceedings are meant to make the more expeditious than criminal actions, not less. (*Alfredo*, *supra*, at 1255.) The dissent further stated the state may have a "legitimate interest" in continuing to detain juveniles who have been arrested when there exists a supported basis for doing so, but that it does not justify expanding the length for detention solely based on criminal activity. (*Ibid.*)

This bill would, in part, codify the holding in *McLaughlin* for both adults and juveniles while abrogating *Alfredo*.

3) **Pretrial Detention Effects**: According to some researchers who examined pretrial detentions and recidivism rates, there are three major takeaways about the effect of pretrial detentions:

> "First, being held in detention pretrial beyond one or two days increases a person's chances of being arrested and charged again pretrial (for those eventually released before case disposition) and post-disposition. Second, all things considered, the longer one's stint in detention, the greater the odds of new penal contact. And third, the effects of pretrial detention on future penal system involvement are especially pronounced for low-risk defendants, individuals who likely would not have had further criminal legal system involvement had they not been held in detention. Thus, a growing body of research indicates that pretrial detention is creating 'recidivators' out of individuals who might not otherwise (re)offend."

(Sandra Smith PH.D. *Pretrial Detention, Pretrial Release, & Public Safety*. (Jul. 2022) <https://www.hks.harvard.edu/publications/pretrial-detention-pretrial-release-public-safety> [as of Mar. 2, 2023] at p. 6, footnotes omitted.)

The California Committee on Revision of the Penal Code has recently stated that California's pretrial timeline misses important procedural protections of when the first court appearance must occur and when a probable cause determination must be made. (California Committee on Revision of Penal Code. *Annual Report and Recommendations*. (Dec. 2022) <http://www.clrc.ca.gov/CRPC.html> [as of Mar. 2, 2023] at p. 60.)

Indeed, California has an unknown number of overlapping laws that discuss the timing of when an arrestee must be brought before a magistrate. (Pen. Code, §§ 821, 822, 825, 847, 849, 852.3, 859, 1301.) Of these, Penal Code sections 825 and 849 have generally been used by courts to examine delays in probable cause determinations and arraignments. (*People v. Williams* (2010) 49 Cal. 4th 405, 446; *People v. Hughes* (2002) 27 Cal. 4th 287, 326-27; *People v. Turner* (1994) 8 Cal. 4th 137, 175; *Ng v. Superior Court* (1992) 4 Cal. 4th 29, 36-39.) One section covers arrests pursuant to warrants and the other deals with warrantless arrests. (Pen. Code, §§ 825, 849.)

With regards to arrests pursuant to a warrant, existing law requires that an arrestee be brought before a magistrate without unnecessary delay, and in any event within 48 hours, but it excludes Sundays and weekends. (Pen. Code, § 825.) This bill would remove the exclusion of Sundays and holidays to avoid the perils of pretrial detention as mentioned above. With regard to warrantless arrests, while existing law states that an arrestee must be brought before a magistrate without unnecessary delay, it fails to properly lay out *McLaughlin's* 48 hour rule. This bill would remedy that shortcoming.

4) **Argument in Support**: According to the bill's sponsor, *California Attorneys for Criminal Justice*, "Any period of pretrial detention is harmful to an incarcerated person, jeopardizing their housing, job security, and mental health. Currently, people who are arrested can be held in jail for days without seeing a lawyer, even though many will never even be charged.

"Currently, California's pretrial timeline requires people who have been arrested to have their first court appearance "without unnecessary delay" after arrest. The Penal Code sets a 48-hour timeframe for these arraignment hearings, but allows exceptions for Sundays and holidays. As a result of the exceptions, in practice, people can remain in custody for three to five days before seeing a judge. Thirteen states including Texas, Florida, and Alabama require an arraignment hearing within 48 hours of arrest without exceptions for Sundays and holidays.

"In addition, California's Penal Code has not been updated to address the United States Supreme Court case of *County of Riverside v. McLaughlin* (1991). This case requires a neutral judge to review for probable cause every arrest made without a warrant within 48 hours and without additional time for weekends or holidays – an essential safeguard against blatantly illegal arrests or mistakes by law enforcement. A 2022 survey of adult court public defenders regarding probable cause reviews in their county indicated significant variation in county practices, with many responses indicating that the McLaughlin rule was not adhered to.

"The potential problems are worse in juvenile cases, where current law allows 3 to 7 days to pass before a judicial review of the arrest.

"AB 61 will update the arraignment timeline to remove exceptions for Sundays and holidays, and ensure that a judge promptly reviews every arrest for probable cause."

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "AB 61 would put a tremendous staffing burden on the criminal justice system, including on the courts, public defenders, and prosecutors. With no exceptions for weekends and holidays, courtrooms would have to be staffed by judges, court personnel, defense attorneys, and prosecutors seven days a week, including holidays. Sheriffs would have to transport defendants to court seven days a week. District attorneys and city attorneys would be forced to have prosecutors on duty seven days a week, including holidays, in order to review police reports and file charges. Public Defender, District Attorney, and City Attorney offices do not have enough staff for this kind of major change. Juvenile courts would similarly be adversely impacted by AB 61.

"Requiring that conditions of release and the setting of bail be considered within 48 hours, with no exceptions for weekends and holidays, also means that many crime victims will not be able to be present at these hearings and, therefore, their views will not be heard by the judge.

"The current 48-hour arraignment rule in Penal Code Section 825, which has exceptions for weekends and judicial holidays, has worked well for many years. It contains a specific provision that permits an arraignment to be held on the next judicial day if the 48-hour time period expires when the court is not in session. AB 61 does not contain any such provision. AB 61, for example, would require a defendant arrested for murder or rape at 10:00 p.m. on a Friday night to be arraigned by 10:00 p.m. on Sunday night, when courts are not in session. In a complex case such as murder or sexual assault, police and prosecutors would need every minute of the 48 hours in order to investigate and file charges. Therefore, judges, court staff, public defenders, and prosecutors would have to be available 24-7 for arraignments.

In addition to the staffing burdens outlined above, AB 61 permits a probable cause determination to be based on "sworn statements" from the arresting officer but does not define or clarify what the term means. Would the arresting officer have to appear in person or remotely before a judge in order to make an oral statement? Or would there be a separate written document the arresting officer could submit?"

6) **Prior Legislation**:

a) AB 1636 (Bonta), of the 2019-2020 Legislative Session, would have require the court, at the time a defendant appears for arraignment on a felony complaint, to make a determination as to whether there is probable cause for each felony charged in the complaint. AB 1636 was held in the Assembly Appropriations Committee.

b) AB 2013 (Jones-Sawyer), Chapter 689, Statutes of 2016, established a three year pilot program in three counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant.

c) AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, would have required the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge. AB 696 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Sponsor)
ACLU California Action
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources, Advocacy and Services

Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice
Milpa (motivating Individual Leadership for Public Advancement)
Pacific Juvenile Defender Center
San Mateo County Participatory Defense
Showing Up for Racial Justice (SURJ) At Sacred Heart in San Jose
Smart Justice California
The Bail Project

1 Private Individual

Opposition

California District Attorneys Association
Peace Officers Research Association of California (PORAC)

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

Amended Mock-up for 2023-2024 AB-61 (Bryan (A))

Mock-up based on Version Number 98 - Amended Assembly 2/23/23
Submitted by: Mureed Rasool, Assembly Committee on Public Safety

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

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

~~(a) It is the intent of the Legislature to update California's criminal pretrial procedures by ensuring that arraignments occur at regular times and to adhere to applicable precedent from the United States Supreme Court. The Committee on Revision of the Penal Code has recently recommended these reforms in its 2022 Annual Report and Recommendations.~~

~~(b) Numerous other states require initial court appearances at more regular times than California does. At least 13 states require a first appearance to be held within 48 hours of arrest or sooner, including Texas, Florida, Alabama, Georgia, Mississippi, and New York.~~

~~(c) The Penal Code also does not contain a codification of the requirement from County of Riverside v. McLaughlin (1991) 500 U.S. 44 that every warrantless arrest be reviewed by a neutral judicial officer for probable cause promptly, but no more than 48 hours after the arrest. Numerous other states such as Florida, Louisiana, and Arizona, expressly incorporate McLaughlin's requirements of a prompt review of probable cause into their criminal codes.~~

(a) It is the intent of the Legislature to codify the holding in *County of Riverside v. McLaughlin* (1991) 500 U.S. 44 that every warrantless arrest be reviewed by a judicial officer for probable cause promptly after arrest, that probable cause determinations made after 48 hours requires the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance, and that matters such as intervening weekend or the need for consolidating pretrial proceedings are not extraordinary circumstances.

~~(d)~~ **(b)** It is the intent of the Legislature to abrogate the holding of Alfredo A. v. Superior Court (1994) 6 Cal.4th 1212 that a probable cause determination for juveniles may occur more than 48 hours after arrest.

SEC. 2. Section 825 of the Penal Code is amended to read:

825. (a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the ~~court~~ **magistrate** ~~for arraignment and consideration of conditions of release or setting of bail,~~ without unnecessary delay, and, in any event, within 48 hours after their arrest.

(2) When the 48 hours prescribed by paragraph (1) expires at a time when the court is in session, the arraignment may take place at any time during that session.

(b) After the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars ($500), to be recovered by action in any court of competent jurisdiction.

~~(c) (1) Promptly after any warrantless arrest, but no more than 48 hours after the arrest, the court shall review the basis for the arrest and make an initial determination whether probable cause exists that an offense has been committed and that the arrested person committed it.~~

~~(2) The initial probable cause determination described in paragraph (1) may be based on sworn statements from the arresting officer, may be conducted in chambers or remotely by the court, and need not be an adversary proceeding. It may also occur at the proceeding specified in subdivision (a).~~

~~(3) If the court makes an initial finding of no probable cause pursuant to paragraph (1), the court shall order the person to be released immediately, and shall immediately convey that order to the person having custody of the arrested person.~~

~~(4) The court shall make a record of the initial determination of probable cause in the court file. Such record shall include, without limitation, the initial determination of whether the arrest was supported by probable cause, the time of the arrest, the time of the initial determination of probable cause, and any materials relied on by the court in making the determination~~.

~~(5) An initial determination of probable cause pursuant to this subdivision shall not be binding on the court in a preliminary hearing or any other future evidentiary proceeding to determine the existence of probable cause.~~

SEC. 3. Section 849 of the Penal Code is amended to read:

§ 849. Arrest without warrant; Taking of person before magistrate or releasing from custody; Record of arrest
(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, **and, in any event, within 48 hours after their arrest,** be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested

person shall be laid before the magistrate.

(1) Promptly after any warrantless arrest, but no more than 48 hours after the arrest, the court shall review the basis for the arrest and make an initial determination as to whether probable cause exists that an offense has been committed and that the arrested person committed it. If a probable cause determination has not been made within 48 hours, the prosecution must demonstrate the existence of a bona fide emergency or other extraordinary circumstance.

(2) The initial probable cause determination described in paragraph (1) may be based on sworn statements from the arresting officer, may be conducted in chambers or remotely by the court, and need not be an adversary proceeding. It may also occur at the proceeding pursuant to subdivision (a) or subdivision (a) of Section 825.

(3) If the court makes an initial finding of no probable cause pursuant to paragraph (1), the court shall order the person to be released immediately, and shall immediately convey that order to the person having custody of the arrested person.

(4) The court shall make a record of the initial determination of probable cause in the court file. Such record shall include, without limitation, the initial determination of whether the arrest was supported by probable cause, the time of the arrest, the time of the initial determination of probable cause, and any materials relied on by the court in making the determination.

(5) An initial determination of probable cause pursuant to this subdivision shall not be binding on the court in a preliminary hearing or any other future evidentiary proceeding to determine the existence of probable cause.

(b) A peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

(1) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

(3) The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(4) The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.

(5) The person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance use disorders, for mental health evaluation and treatment, and no further proceedings are desirable.

(c) The record of arrest of a person released pursuant to paragraph (1), (3), or (5) of subdivision (b) shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

SEC. 3. 4 Section 631 of the Welfare and Institutions Code is amended to read:

631. (a) ~~Except as provided in subdivision (b),~~ **W**~~w~~henever a minor is taken into custody by a peace officer or probation officer, except when the minor willfully misrepresents themselves as 18 or more years of age, the minor shall be released within 48 hours after having been taken into custody, ~~excluding nonjudicial days, unless within that period of time a petition to declare the minor a ward has been filed pursuant to this chapter or a criminal complaint against the minor has been filed in a court of competent jurisdiction.~~ **if that minor does not receive an initial judicial determination of probable cause. This determination may be based on sworn statements from the arresting officer, may be conducted in chambers or remotely by the court, and need not be an adversary proceeding. It may also occur at the detention hearing described in Section 632 if that hearing occurs within 48 hours after the arrest.**

(b) ~~Except when the minor represents themselves as 18 or more years of age, whenever a minor is taken into custody by a peace officer or probation officer without a warrant on the belief that the minor has committed a misdemeanor that does not involve violence, the threat of violence, or possession or use of a weapon, and if the minor is not currently on probation or parole, the minor shall be released within 48 hours after having been taken into custody , excluding nonjudicial days, unless a petition has been filed to declare the minor to be a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court pursuant to Section 635.~~ In all cases involving the detention of a minor pursuant to this **section** ~~subdivision~~, any decision to detain the minor more than 24 hours shall be subject to written review and approval by a probation officer who is a supervisor as soon as possible after it is known that the minor will be detained more than 24 hours. However, if the initial decision to detain the minor more than 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) Whenever a minor who has been held in custody for more than 24 hours by the probation officer is subsequently released and no petition is filed, the probation officer shall prepare a written explanation of why the minor was held in custody for more than 24 hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

~~(d) In any case, a minor shall be released within 48 hours after having been taken into custody if that minor does not receive an initial judicial determination of probable cause. This determination may be based on sworn statements from the arresting officer, may be conducted in chambers or~~

~~remotely by the court, and need not be an adversary proceeding. It may also occur at the detention hearing described in Section 632 if that hearing occurs within 48 hours after the arrest.~~

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

Date of Hearing: March 7, 2023
Counsel: Liah Burnley

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

AB 93 (Bryan) – As Amended February 23, 2023

SUMMARY: Prohibits consent searches by peace officers, as specified. Specifically, **this bill**:

1) States that the consent of a person given to a peace officer to conduct a search shall not constitute lawful justification for a search.

2) Provides that a warrantless consent search is a violation of that person's rights.

3) Prohibits a peace officer from seeking consent to conduct a warrantless search of a vehicle, person, or their effects.

4) Prohibits a law enforcement agency from authorizing a peace officer to conduct a consent search.

5) Provides that these provisions shall not be construed to limit the authority of a peace officer to conduct a search based on probable cause, a valid warrant, or another legal basis that is not consent.

6) States Legislative findings and declarations.

7) States Legislative intent to protect against police searched based on purported consent rather than on an evidentiary basis

EXISTING FEDERAL LAW: Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., 4th Amend.)

EXISTING STATE LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., art I, § 13.)

2) Sets forth the circumstances for which a search warrant may be issued. (Pen. Code, §§ 1523-1542.)

3) Provides that a defendant may move for the return of property or to suppress evidence obtained as a result of a search or seizure if, among other reasons, the search without a warrant was unreasonable. (Pen. Code, § 1538.5, subd. (a).)

4) Provides that relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, subject to the existing statutory role of evidence relating to privilege or hearsay, or inadmissibility. (Cal. Const., art. I, § 28.)

5) Requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before engaging in questioning related to a criminal investigation or a traffic violation.. (Veh. Code, § 2806.5.)

6) Requires DMV to include within the Driver's Handbook a section on a person's civil rights during a traffic stop, including the limitations on a peace officer's authority during a traffic stop and the legal rights of drivers and passengers. (Veh. Code, § 1656.3, subd. (a)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 93 will prohibit police officers from asking for consent to search a person or their vehicle without an evidence-based legal justification. Consent searches are inherently vulnerable to bias because they are not based on objective criteria, and police have full discretion to choose when and from whom to seek such a search.

   "RIPA data reveals that Black individuals were 4 times as likely and Latino individuals were 2.4 times as likely to be asked for a consent search during a traffic stop than White individuals. During stops where officers perform consent searches, officers are least likely to find contraband in the possession of those who are Black. Despite this, a far higher percentage of stops of Black individuals involve consent searches compared to any other group. Essentially, people of color, particularly Black individuals, are being unjustly asked to waive their 4th amendment rights by officers holding lethal weapons under the guise of being voluntary.

   "Limiting consent searches will help stop unjustifiable police interactions that lead to more intrusive and at worst lethal encounters with communities of color."

2) **Search Warrant Requirement**: The Fourth Amendment of the U.S. Constitution and Article I, Section 13 of the California Constitution provide safeguards against unreasonable search and seizures. Generally, a "search" is a governmental intrusion upon, or invasion of a person's security in an area in which they have a reasonable expectation of privacy. (*People v. Mayberry* (1982) 13 Cal.3d 35, 341.) These constitutional provisions both generally require the police to secure a warrant before conducting a search, and specify that the warrant must be issued "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched."

Penal Code section 1523 defines a "search warrant" as an order, in writing, signed by a magistrate, commanding a peace officer to search for personal property and bring it before a magistrate. Section 1524 outlines the statutory grounds for issuance of search warrants and mandates that they be supported by probable cause. The standard for probable cause to issue a search warrant is "whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.)

The search warrant requirement is subject to some exceptions, such as warrantless vehicle searches, searches to preserve life or property, searches of probationers and parolees, temporary searches incident to detention and arrests, and school searches. Consent searches are also an exception to the warrant requirement of the Fourth Amendment.

3) **Parameters of Warrantless Consent Searches**: Officers do not need to suspect any wrongdoing or have probable cause to seek a consent search, and officers can use their discretion to decide when to request a consent search. (*Florida v. Royer* (1983) 460 U.S. 491, 497; see also *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 227.) Consent to search is broad in scope, unless limited by the person giving it or by the officers' statements. (*People v. Miller* (1999) 69 CA.4th 190, 203.) Consent must be free and voluntary, rather than a mere submission to a claim of lawful authority or the result of coercion or distress. (*Florida v. Royer*, *supra*, 460 U.S. at p. 497.) Consent can be manifested by actions as well as by words. (*People v. Harrington* (1970) 2 Cal.3d. 991, 995.) Consent may be withdrawn anytime before a search is completed. (*People v. Hamilton* (1985) 168 Ca.3d 1058, 1067.) But, advice that consent can be refused is not required. (*U.S. v. Watson* (1976) 423 U.S. 411, 424.) Use of ruse by the police, or evidence to mislead is a factor to be considered, but does not make consent involuntary. (*People v. Avalos* (1996) 47 Cal.4th 1569, 1577.)

4) **The Exclusionary Rule and Proposition 8**: The exclusionary rule requires suppression of evidence seized during an unreasonable search or seizure in violation of the Fourth Amendment. (U.S. Const., amend. IV, XIV; *Wong Sun v. United States* (1963) 371 U.S. 471, 484-487.) Penal Code section 1538.5 requires courts to suppress evidence that was obtained in a way that violates the California Constitution or the U.S. Constitution.

In 1982, the California voters passed Proposition 8. Proposition 8 enacted article I, section 28 of the California Constitution, which provides in relevant part: "Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings." (Cal. Const., art. I, § 28, subd. (f); *People v. Lazlo* (2012) 206 Cal.App.4th 1063, 1069.) The "Truth-in-Evidence" provision of Section 28 "was intended to permit exclusion of relevant, but unlawfully obtained evidence, only if exclusion is required by the United States Constitution." (*In re Lance W.* (1985) 37 Cal.3d 873, 890 (*Lance W.*).) Thus, Section 28 federalized California's search and seizure law. A trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution. (*Lance W.*, *supra*, 37 Cal.3d at p. 896.)

This bill would provide that a warrantless search conducted solely on the basis of a person's consent is a violation of that person's rights. However, such a violation would not necessarily

rise to the level of a Fourth Amendment violation. (*People v. McKay* (2002) 27 Cal.4th 601, 605 [the violation of a state statute, standing alone, does not form the basis for suppression under the Fourth Amendment.) Accordingly, this bill would not require a two-thirds vote pursuant to Proposition 8, and will not necessarily result in exclusion of evidence found during a consent search as a remedy. If this bill is enacted, evidence obtained by an officer pursuant to a consent search could generally still be introduced at trial. However, the prohibition could potentially be used in other contexts, such as civil rights actions, disciplinary and internal affairs investigations, and other civil or administrative actions.

5) **Coercive Nature of Voluntary Consent**: A salient critique of consent searches is that they are inherently coercive because implicit in the police officer's questioning is a show of authority that will intimidate the average person. (*Lawrence v. United States* (D.C. 1989)566 A.2d 57, 61.) Many people, if not most, will always feel coerced by police requests to search. (See Strauss, *Reconstructing Consent* (2001) 92 J. Crim. L. & Criminology 211, 221 [arguing that consent searches are often not consensual].) Given the nature of police authority and the context of the citizen–police encounter, it is highly likely that police requests to search are often interpreted as commands to permit the search to take place. (Tiersma & Sloan, *The Language of Consent in Police Encounters* (2012), at p. 337.) Indeed, 98.5% of people consent to a search of either their person or property when an officer requested to perform a search during a traffic stop. (Racial and Identity Profiling Advisory Board, *2023 Annual Report* at p. 71 <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> [as of Feb. 28, 2023].)

   Research also shows that "decision makers judging the voluntariness of consent consistently underestimate the pressure to comply with intrusive requests. This is problematic because it indicates that a key justification for suspicionless consent searches—that they are voluntary—relies on an assessment that is subject to bias." (Sommers & Bons, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance* (2019) 128 Yale L. J.1962, 1965.)

   Another "objection to consent searches is that the legal standard for determining the voluntariness of consent is murky and ill-defined, allowing courts to find consent voluntary in all but the most extreme cases." (Sommers & Bons, *supra*, at p. 1969.) Courts determine whether there was consent to a search by determining whether the officers' belief that they had consent is "objectively reasonable under the circumstances." (*People v. Machupa* (1997) 2 Cal.3d 991, 995.) Systematic studies of lower-court rulings have found that judges rarely give weight to individualized factors about the accused when deciding voluntariness. Instead, judges tend to focus on the conduct of the police, such as whether officers used a "conversational tone" and whether they drew their weapons. If there is "no threat, no command, not even an authoritative tone of voice," judges generally infer that the defendant felt free to refuse the search. (Sommers & Bons, *supra*, at p. 1969.)

6) **Racial Disparities in Consent Searches**: Data indicates that there are significant racial disparities related to consent searches. For example, "local law enforcement officers are especially likely to search Black and Latino drivers during nighttime stops, but discovery rates for contraband or evidence are lower than those of white drivers." (Public Policy Institute of California, *Racial Disparities in Traffic Stops*, (October 2022) <https://www.ppic.org/publication/racial-disparities-in-traffic-stops/> [as of Feb. 28, 2023].)

In San Francisco, Black drivers are eight times more likely than white drivers to be subjected to a consent search after a traffic stop, and Latino drivers are searched at almost four times the rate of white drivers. (San Francisco Chronicle, *Racial Disparities in SF Traffic Searches Raise Concerns of Bias* (April 8, 2018) <https://www.sfchronicle.com/crime/article/Racial-disparities-in-SF-traffic-searches-raise-7235690.php> [as of Feb. 23, 2023].)

At the request of the Los Angeles Police Commission, the Office of the Inspector General (OIG) reviewed vehicle, pedestrian, and bicycle stops conducted by the Los Angeles Police Department (LAPD) in 2019. For stops based on traffic violations, the rate of consent-only searches was seven times higher for Black men than White men, and five times higher for Hispanic men than White men. In examining these searches the OIG found: "Racial differences persisted even for searches considered to be more discretionary, such as consensual searches or searches based on generalized officer safety concerns. Searches of Black and Hispanic people, including higher-discretion searches, were generally less likely to be associated with the recovery of contraband or other evidence than were searches of White people. With respect to serious contraband such as a firearm, the recovery rates were relatively low – around two percent—and varied only slightly by race, with searches of Black and Hispanic people being slightly more likely to be associated with the recovery of a firearm than searches of other groups." The OIG also found "Instances in which a Black or Hispanic person was searched were also less likely to result in an arrest than were instances in which a White person was searched."(Los Angeles Police Commission, *Review of Stops Conducted by the Los Angeles Police Department in 2019* (October 27, 2020) at p. 4 <https://www.oig.lacity.org/_files/ugd/b2dd23_d3e88738022547acb55f3ad9dd7a1dcb.pdf> [as of Feb. 23, 2023].)

7) **Recommendations by the Committee on Revision of the Penal Code**: The Committee on Revision of the Penal Code was established by the Legislature and the Governor to study all aspects of criminal law and procedure and make recommendations that would simplify and rationalize the law. In its 2022 Annual Report, the Committee recommends, among other things, to limit consent searches during traffic stops. (Committee on the Revision of the Penal Code, *2022 Annual Report and Recommendations* at p. 3 <http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf> [as of Feb. 28, 2023].)

   Specifically, the Committee recommends allowing "police officers to request permission to search during traffic stops only when the officer has reasonable suspicion to believe the search will uncover evidence of a crime." (*Id.*, at pp. 36-38.) "The reasonable suspicion threshold should be extended to consent searches, so that consent-based searches are only undertaken when there is some articulable level of suspicion, as opposed to a potentially-biased hunch." (*Ibid.*)

   This bill goes beyond the recommendation of the Committee on the Revision of the Penal Code in that it prohibits consent searches altogether.

8) **Recommendations by the Racial Identity and Profiling Advisory Board**: The Racial and Identity Profiling Advisory Board's annual reports examine a wide range of issues related to racial and identity profiling in policing. The Board's 2023 Annual Report analyzes the stop data from January 1, 2021 to December 31, 2021, collected and reported by 58 law enforcement agencies in California, including data and research on pretextual stops and consent searches. In its report, the Board calls on the Legislature, law enforcement agencies,

and local district attorneys to "prohibit certain searches, such as consent searches or supervision searches, during traffic stops and instead requiring probable cause for any search." The Board's report also recommends, "Policies should prohibit specific types of enforcement actions traditionally allowed in the absence of probable cause or reasonable suspicion." (Racial and Identity Profiling Advisory Board, *2023 Annual Report* at pp. 7, 13-14 <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> [as of Feb. 28, 2023].)

Again, this bill goes beyond the recommendations of the Board in that it prohibits consent searches altogether.

9) ***Rodriguez v. California Highway Patrol***: The California Highway Patrol (CHP) issued a moratorium on consent searches from 2001 to 2006, upon the recommendation of a team of CHP managers and a pending federal class-action case, *Rodriguez v. California Highway Patrol* (N.D. Cal. 2000) 89 F. Supp. 2d 1131, alleging racial discrimination. Data obtained through discovery in the case revealed that Latinos were approximately three times as likely to be searched by drug interdiction officers as Whites, and African Americans were approximately twice as likely to be searched by drug interdiction officers. (American Civil Liberties Union, *California Highway Patrol Bans Consent Searches Following Review of Data Collection Showing Discriminatory Pattern*, (April 2001) <https://www.aclu.org/press-releases/california-highway-patrol-bans-consent-searches-following-review-data-collection> [as of Feb. 27, 2023]; see also Los Angeles Times, *CHP Settles Lawsuit Over Claims of Racial Profiling* (February 23, 2003) <https://www.latimes.com/archives/la-xpm-2003-feb-28-me-search28-story.html> [as of Feb. 27, 2023].) In so doing, CHP became the nation's first law enforcement agency to voluntarily agree to stop asking motorists for permission to search their vehicles.

While the terms of this agreement made effective steps towards addressing racial profiling within CHP, the moratorium expired in 2006. AB 2133 (Torrico), was introduced in 2006 to codify the moratorium and establish a statewide policy for all law enforcement to end consent searches. However, AB 2133 was never heard at the request of the author. (Asm. Comm. on Public Safety, Analysis of AB 2133 (2005-2006 Reg. Sess.) as amended April 6, 2006, p. 11.)

10) **Limitations on Consent Searches in Other States**: In 2002, the New Jersey Supreme Court held that in order for a consent to search a motor vehicle, law enforcement personnel must have a reasonable and articulable suspicion of criminal wrongdoing prior to seeking consent. (*State v. Carty* (2002)170 N.J. 632.)

In 2003, the Minnesota Supreme Court also held that in the absence of reasonable, articulable suspicion a consent-based search obtained by exploitation of a routine traffic stop that exceeds the scope of the stop's underlying justification is invalid. (*State v. Fort* (2003) 660 N.W.2d 415, 416.)

The Austin Police Department in Texas revised its consent search policy in 2012 to require that officers only request consent to search when they have an articulable reason to believe the search is necessary and likely to produce evidence related to an investigation. A driver must give permission for a search in writing before a consent search can be initiated. (City of Austin Police Department, *2018 Annual Racial Profiling Report* (February 2019) at p. 3

<https://www.austintexas.gov/sites/default/files/files/Police/2013_racial_profiling_report_022414.pdf> [as of Feb. 27, 2023].)

Rhode Island passed legislation in 2017 that limits consent searches by a law enforcement officer unless there is reasonable suspicion or probable cause of criminal activity. (RI Gen. L. § 31-21.2-5 (2017).)

Connecticut passed legislation in 2020 that prohibits police officers from asking for consent to search a vehicle during a traffic stop and prohibits consent searches in limited situations, including searches of a person that are not supported by probable cause. (Conn. H.R. No. 6004, July Special Session, Public Act No. 20-1 at p. 37.)

11) **Policy Considerations**: This bill outright prohibits officers from seeking consent to search a vehicle, person, or their effects without a warrant and provides that a warrantless consent search is a violation of that person's rights.

This prohibition runs contrary to a long line of cases upholding consent as an exception to the warrant requirement of the federal and state constitutions. It is well settled by the U.S. Supreme Court that one of the specifically established exceptions is a search that is conducted pursuant to consent. (*Vale v. Louisiana* (1970) 399 U.S. 30, [a search authorized by consent is wholly valid]; see also *Davis v. United States* (1946) 328 U.S. 582; *Zap v. United States* (1946) 328 U. S. 630.)

In *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, the U.S. Supreme Court described the utility of consent searches. "Without such investigation, those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved. In short, the security of all would be diminished." (*Id.* at p. 225.)

Accordingly, some opponents of the bill have opposed a blanket ban, but suggest that it is possible to find some common ground in regulating consent searches, for example by limiting them to instances in which the officer has probable cause that a crime has been committed. However, in *Schneckloth* the Supreme Court pointed out that situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence. (*Id.* at p. 227.) *Schneckloth* addresses the question whether an officer must have probable cause to request consent for a search (the answer is no). However, *Schneckloth* does not address the question whether a standard less than probable cause could be required for consent searches.

Probable cause exists when there is a fair probability that a search will result in evidence of a crime being discovered. (*Illinois v. Gates*, (1983) 462 U.S. 213, 238.) The Fourth Amendment and California constitution already require all searches to be supported by probable cause. (U.S. Const., 4th Amend; Cal. Const., art I, § 13.) Consent is an exception. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218.) Thus, logic follows, that adding a probable cause requirement to consent searches only serves to eviscerate the entire concept of consent as an exception. Further, in many instances, if an officer has probable cause, they are not required to obtain consent prior to conducting a search. For example, searches incident to arrests and vehicle searches, even without consent, are permissible if an officer has probable cause. (*United States v. Robinson* (1973) 414 U.S. 218, 235; *Husty v. United*

States (1931) 282 U.S. 694.) Moreover, probable cause is already the standard for a warrant, making consent based on probable cause all but meaningless. (*Whiteley v. Warden* (1971) 401 U.S. 560, 564.)

Alternatively, allowing consent searches only in instances where an officer has reasonable suspicion would require the officer to be able to articulate a basis for the search could sufficiently limit the vast discretion officers currently have to conduct consent searches. The reasonable suspicion standard is less stringent than probable cause, but requires more than an inchoate and unparticularized suspicion or hunch; it must be based on specific and articulable facts, taken together with rational inferences from those facts. (*Terry v. Ohio* (1968) 329 US. 1, 27.)

Requiring consent searches to be supported by reasonable suspicion would not be unprecedented. The New Jersey Supreme Court, which limited consent searches to those supported by reasonable suspicion, stated that the reasonable and articulable suspicion standard "serves the prophylactic purpose of preventing the police from turning routine traffic stops into a fishing expedition for criminal activity unrelated to the lawful stop." (*State v. Carty* (2002)170 N.J. 632, 634.)

Also, limiting consent searches to instances in which an officer has reasonable suspicion was recommended by the Committee on the Revision of the Penal Code: "Allow police officers to request permission to search during traffic stops only when the officer has *reasonable suspicion* to believe the search will uncover evidence of a crime." (Committee on the Revision of the Penal Code, *2022 Annual Report and Recommendations*, *supra*, at p. 36 (emphasis added).) "The *reasonable suspicion threshold should be extended to consent searches*, so that consent-based searches are only undertaken when there is some articulable level of suspicion, as opposed to a potentially-biased hunch." (*Ibid.* (emphasis added).) As noted above, as introduced, this bill goes far further than that recommended by the Committee on the Revision of the Penal Code.

Accordingly, the Legislature should consider whether, rather than banning consent searches, it could strike a balance by limiting consent searches to instances where officers have reasonable and articulable suspicion to believe that the search is likely to produce evidence of an offense.

12) **Argument in Support**: According to *Initiate Justice*, "These searches are invasive and traumatizing, and amount to fishing expeditions that are significantly influenced by officers' biases.

"Indeed, research shows that people of color are significantly more likely to be asked to submit to a search than people who are white. Statewide, Black people are 4 times as likely, Latine people 2.4 times as likely, and multiracial people 2.2 times as likely to be asked for consent to search during a traffic stop than white people. In Los Angeles, 7 out of every 10 bicyclists searched by the Sheriff's Department was Latine. In San Francisco, Black motorists were eight times more likely than white drivers to be subjected to a consent search after a traffic stop, and Latine drivers were searched at almost four times the rate of white drivers. Yet research consistently shows that searches of Black and Latine people are significantly less likely to uncover contraband than are searches of people who are white."

13) **Argument in Opposition**: According to *San Diego Deputy District Attorneys Association* (SDDDAA), "Our federal and state Constitutions and well-established case law provide very clear boundaries for what constitutes a valid consent search under the law. When an individual gives their consent to search their vehicle, their person, or their property, courts have bright line parameters provided in case law that require the scrutinization of the voluntariness and scope of consent. [...] This extreme bill of throwing out all consensual searches takes away another valuable and lawful tool for law enforcement, while also removing choice from individuals in a free society to decide when they want to aid police, solve a crime, or ensure an innocent person is exonerated. ...

"The Committee on Revision of the Penal Code is concerned about two areas as it relates to consent searches: (1) police asking for consent more often from people of color and (2) lower rates of discovering evidence of a crime from consent searches. [...] It should be noted that this bill goes even further than the recommendations from the Committee on Revision of the Penal Code, which suggests consent searches when there is reasonable suspicion. This bill bans any person from freely choosing to allow the police to search a vehicle, their person or their effects/property. Put simply, this bill strips law enforcement of legally valid tools, strips individuals of free will to consent, and does nothing to keep the public safer in communities held hostage by violence."

14) **Related Legislation**:

a) AB 272 (Chen), would allow a search warrant for stolen property to include an order for such property to be returned to the person named in the warrant. AB 272 is pending hearing in this Committee.

b) SB 64 (Umberg), would authorize a search warrant to be issued on the grounds that the property or things to be seized consists of evidence that tends to show that certain misdemeanor hate crimes have occurred. SB 64 is pending hearing in the Senate Public Safety Committee.

15) **Prior Legislation**:

a) AB 2537 (Gipson), Chapter 332, Statutes of 2022, requires driver education courses to include a video on proper conduct by peace officers and individuals during a traffic stop.

b) AB 2773 (Holden), Chapter 805, Statutes of 2022, requires a peace officer making a traffic or pedestrian stop to state the reason for the stop before asking any questions.

c) AB 2918 (Holden), Chapter 723, Statutes of 2018, requires the DMV to include within its Handbook a section on a person's civil rights during a traffic stop.

d) AB 2133 (Torrico), of the 2005-2006 Legislative Session, would have prohibited consent searches in connection with traffic stops. AB 2133 was not heard in this Committee at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Sponsor)
Aapi Equity Alliance
Alianza
Alianza Coachella Valley
Alliance San Diego
American Atheists
American Friends Service Committee
Asian Americans Advancing Justice - Asian Law Caucus
Asian Prisoner Support Committee
Black Jewish Justice Alliance
Black Lives Matter - Los Angeles
Black Lives Matter Sacramento
California Association of Black Lawyers
California Attorneys for Criminal Justice
California Bicycle Coalition
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Cancel the Contract Antelope Valley
Children's Defense Fund - CA
Chispa, a Project of Tides Advocacy
Coalition for Humane Immigrant Rights (CHIRLA)
Communities United for Restorative Youth Justice (CURYJ)
Council on American-islamic Relations, California
Courage California
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners Glide
Housing Is a Human Right Oc (HHROC)
Initiate Justice
Interfaith Movement for Human Integrity
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Los Angeles County Bicycle Coalition
Norcal Resist
Oakland Privacy
Orange County Equality Coalition
People's Budget Orange County
San Francisco Public Defender
Smart Justice California
Social Justice Learning Institute
Social Justice Legal Foundation
Transforming Justice Oc
Woodhull Freedom Foundation

Opposition

Arcadia Police Officers' Association

Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diegans Against Crime
Santa Ana Police Officers Association
Upland Police Officers Association
Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 7, 2023
Counsel: Andrew Ironside

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

AB 97 (Rodriguez) – As Introduced January 9, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Justice (DOJ) to report data on arrests and prosecutions of specified misdemeanor offenses related to unserialized firearms. **Specifically**, this bill:

1) Requires DOJ to collect and report data on arrests made by law enforcement agencies for the following offenses related to firearms without a valid state or federal serial number:

   a) The number of misdemeanor arrests for buying, selling, receiving, or possessing a firearm with a removed or altered serial number, or for possessing a firearm without a valid serial number; and

   b) The number of misdemeanor arrests for failing to obtain a valid serial number for a manufactured or assembled firearm.

2) Requires DOJ to collect and report the following data:

   a) The disposition of those arrests for the above misdemeanor offenses, including information about whether an arrestee was booked, cited, or released from custody; and

   b) Starting on January 1, 2029, the disposition of prosecutions for the above misdemeanor offenses reported to the department, as specified, including whether charges were dismissed, whether the defendant was acquitted or convicted, or whether the charges were resolved on other grounds, including as a result of plea bargaining.

3) Requires DOJ to issue a report to the Legislature by January 1, 2025, and annually thereafter, detailing the collected data.

4) Sunsets the reporting requirement on January 1, 2033.

EXISTING LAW:

1) Provides that any person who buys, sells, receives, or possesses a firearm knowing that the serial number or other mark of identification has been changed, altered, or removed, is guilty of a misdemeanor. (Pen. Code, § 23920, subd. (a).)

2) Provides that any person who knowingly possesses a firearm that do not have a valid serial number or mark of identification is guilty of a misdemeanor. (Pen. Code, § 23920, subd. (b).)

3) Requires, beginning July 1, 2018, a person manufacturing or assembling a firearm to apply to the DOJ for a unique serial number or other mark of identification for that firearm. (Pen. Code, § 29180, subd. (b)(1).)

4) Punishes the failure to obtain a serial number from DOJ as a misdemeanor, as specified. (Pen. Code, § 29180, subd. (g).)

5) Mandates the Criminal Justice Statistics Center (CJSC) within the DOJ to collect "data elements," as specified, from all state and local prosecutor offices that prosecute misdemeanors and felonies, including district attorney offices, city attorney offices, and the Attorney General's Office. (Pen. Code, § 13370, *et seq.*)

6) Requires every state and local prosecutor office that prosecutes misdemeanors and felonies, beginning on March 1, 2027, to collect data, as specified, for cases in which a decision to reject charges or to initiate criminal proceedings by way of complaint or indictment has been made by that agency. (Pen. Code, § 13370, subd. (d)(1).)

7) Requires prosecuting agencies, beginning on June 1, 2027, to begin transmitting required data to DOJ. (Pen. Code, § 13370, subd. (d)(2).)

8) Requires DOJ, beginning June 1, 2027, to begin collecting data elements from all agencies statewide, as specified. (Pen. Code, § 13370, subd. (d)(3).)

9) Requires DOJ to aggregate data elements for all agencies in order to publish the data from those agencies by June 1, 2028. (Pen. Code, § 13370, subd. (d)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, AB 97 is an important public safety measure for the Legislature to gain a comprehensive picture of the proliferation of ghost guns in California and how criminals are being prosecuted. There are no records of existence for ghost guns – inhibiting law enforcement efforts to trace the firearm to the owner when used in a crime. That and the fact that these deadly weapons do not require a background check make ghost guns popular among criminals.

   In the last several years, the number of ghost guns recovered has increased. In 2021, Los Angeles Police Department released a report stating ghost guns contributed to more than 100 violent crimes, including 24 murders, 8 attempted homicides, and dozens of armed robberies and assaults. In the first six months of the year, the Department confiscated 863 ghost guns, nearly 300% over the previous year. Enough is enough. These firearms are being used to kill members of our community, including our law enforcement officers. By passing AB 97, the Legislature can get a clear picture of how many ghost guns law enforcement recovers annually to inform future policy.

2) **Crime Data**: "The California Attorney General has the duty to collect, analyze, and report statistical data, which provide valid measures of crime and the criminal justice process to government and the citizens of California." (https://www.oag.ca.gov/crime) DOJ's Criminal

Justice Statistics Center (CJSC) collects, analyzes, and develops statistical reports and information that provide valid measures of crime and the criminal justice process in California, as required by the Penal Code. The goal of the CJSC is to provide accurate, complete, and timely criminal statistical information to the public, local government, criminal justice administrators and planners, the Legislature, the Attorney General, the Governor, state agencies, federal agencies, and criminal justice researchers through a variety of publications and services. To provide these services and publications, the CJSC collects and compiles data from more than 1,000 city, county, and state criminal justice agencies in California.

Currently, the DOJ publishes a yearly report titled *Crime in California*. It "contains the most comprehensive set of data on California crimes, arrests, and criminal justice actions. Crime in California contains information on crimes, arrests, adult felony arrest dispositions, adult corrections, criminal justice expenditures and personnel, citizens' complaints against peace officers, and domestic violence." (See https://oag.ca.gov/cjsc/pubs)

As proposed to be amended in committee, this bill would require DOJ to collect and report data on offenses related to firearms without a valid state or federal serial number. Specifically, DOJ would be charged with reporting the number of arrests for buying, selling, or possessing a firearm with a removed or altered serial number or possessing a firearm without a valid serial number; and the number of arrests for failing to obtain a valid serial number for a manufactured or assembled firearm. The DOJ would also have to report the disposition of arrests for specified offenses related to firearms without a valid serial number, including information about whether an arrestee was booked, cited, or released from custody. This information is not reflected in Crime in California because the offenses are misdemeanors.

Beginning June 1, 2027, the Justice Data Accountability and Transparency Act mandates DOJ to begin collecting data from all state and local prosecutor offices that prosecute misdemeanors and felonies, including district attorney offices, city attorney offices, and the Attorney General's Office. (Pen. Code, § 13370(d)(3).) DOJ must publish the data by June 1, 2028. (*Ibid.*)

Under the proposed amendments to this bill, the DOJ would have to report data collected pursuant to the Justice Data Accountability and Transparency Act on the disposition of prosecutions for offenses related to firearms without a valid serial number reported to the department. The information must include data on whether charges were dismissed, whether the defendant was acquitted or convicted, or whether the charges were resolved on other grounds, including as a result of plea bargaining.

3) **Argument in Support**: According to the *California Police Chiefs Association*, "Gun violence has spiked across the state, homicide rates keep climbing, and officers continue to pull more and more illegal firearms off our streets. In 2021, Los Angeles Police Department cited a 400% increase in ghost gun seizures. Just last month, an East Palo Alto officer was shot and injured by a suspect with a fully automatic ghost gun. Despite this violence, possession of a ghost gun is often only chargeable as a misdemeanor. Given the gravity of issue, and potential harm caused by these illegal weapons, it is important our penalties match the threat. From our standpoint, it is completely clear that our laws are not deterring the massive proliferation of weapons…"

4) **Argument in Opposition**: According to the *California Public Defenders Association*, "Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of ghost guns in California.

"Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture ghost guns or ghost gun manufacturing equipment. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon."

5) **Related Legislation:** AB 327 (Jones-Sawyer), would require DOJ to complete the transition of all California's crime statistics reporting so that it is in alignment with federal reporting requirements. AB 327 will be heard in this committee today.

6) **Prior Legislation**:

   a) AB 2418 (Kalra), Chapter 787, Statutes of 2022, enacts the Justice Data Accountability and Transparency Act, which, among other things, mandates the CJSC within DOJ to collect "data elements" as specified, from all state and local prosecutor offices that prosecute misdemeanors and felonies, including district attorney offices, city attorney offices, and the Attorney General's Office.

   b) AB 1621 (Gipson), Chapter 76, Statutes of 2022, redefines one of the definitions of "firearm" as including a precursor part, redefines "firearm precursor part" and prohibits a person from possessing or manufacturing a firearm precursor part without authorization.

   c) AB 1688 (Fong), of the 2021-2022 Legislative Session, would have removed the requirement that a firearm be microstamped with an array of characters in order to be listed on the DOJ roster of "not unsafe" handguns approved for sale. The hearing on AB 1688 in this Committee was cancelled at the request of the author.

   d) AB 2156 (Wicks), Chapter 142, Statutes of 2022, reduces the number firearms that a person, firm, or corporation may manufacture without having a state firearms manufacturing license from 49 to three.

   e) AB 857 (Cooper), Chapter 60, Statutes of 2016, requires a person to apply to and obtain from the DOJ a unique serial number or other mark of identification prior to manufacturing or assembling a firearm.

   f) AB 1084 (Melendez), of the 2013-2014 Legislative Session, would have increased the penalties for numerous offenses related to the illegal possession of firearms, and would have required that many related sentences be served in the state prison rather than county jail under realignment. AB 1084 failed passage in this committee.

g) SB 644 (Canella), of the 2013-2014 Legislative Session, would have, in pertinent part, raised the sentence for a subsequent conviction of possession of a firearm by a convicted felon from a term of 16 months, 2 years or 3 years to a term of 4, 5, or 6 years. SB 644 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
California School Employees Association
Chino Police Department
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Ontario Police Department
Orange County District Attorney
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action
San Francisco Public Defender

1 Private Individual

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

Amended Mock-up for 2023-2024 AB-97 (Rodriguez (A))

Mock-up based on Version Number 99 - Introduced 1/9/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

~~**SECTION 1.** Section 23920 of the Penal Code is amended to read:~~

~~**23920.** (a) Except as provided in Section 23925, any person who, with knowledge of any change, alteration, removal, or obliteration described in this section, buys, receives, disposes of, sells, offers for sale, or has in possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, changed, altered, removed, or obliterated, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.~~

~~(b) Except as provided in Section 23925, any person who, on or after January 1, 2024, knowingly possesses any firearm that does not have a valid state or federal serial number or mark of identification is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.~~

~~**SEC. 2.** Section 29180 of the Penal Code is amended to read:~~

~~**29180.** (a) For purposes of this chapter, "manufacturing" or "assembling" a firearm means to fabricate or construct a firearm, including through additive, subtractive, or other processes, or to fit together the component parts of a firearm to construct a firearm.~~

~~(b) Before manufacturing or assembling a firearm, a person manufacturing or assembling the firearm shall, for any firearm that does not have a valid state or federal serial number or mark of identification imprinted on the frame or receiver, do all of the following:~~

~~(1) (A) Apply to the Department of Justice for a unique serial number or other mark of identification pursuant to Section 29182.~~

~~(B) Each application shall contain a description of the firearm that the applicant intends to assemble, the applicant's full name, address, date of birth, and any other information that the department may deem appropriate.~~

~~(2) (A) Within 10 days of manufacturing or assembling a firearm in accordance with paragraph (1), the unique serial number or other mark of identification provided by the department shall be engraved or permanently affixed to the firearm in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.~~

~~(B) If the firearm is manufactured or assembled from polymer plastic, 3.7 ounces of material type 17-4 PH stainless steel shall be embedded within the plastic upon fabrication or construction with the unique serial number engraved or otherwise permanently affixed in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto.~~

~~(3) After the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, the person shall notify the department of that fact in a manner and within a time period specified by the department, and with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the department, and the firearm in a manner prescribed by the department.~~

~~(c) Any person who owns a firearm or firearm precursor part that does not bear a valid state or federal serial number or mark of identification shall be deemed to be in compliance with subdivision (b) of Section 23920 if they comply with all of the following:~~

~~(1) (A) By no later than January 1, 2024, or if a new resident of the state, within 60 days after arriving in the state with a firearm that does not have a valid state or federal serial number or mark of identification, apply to the Department of Justice for a unique serial number or other mark of identification pursuant to Section 29182.~~

~~(B) An application to the department for a serial number or mark of identification for a firearm precursor part shall include, in a manner prescribed by the department, information identifying the applicant and a description of the firearm that the applicant intends to manufacture or assemble with the firearm precursor part, and any other information that the department may deem appropriate.~~

~~(2) Within 10 days of receiving a unique serial number or other mark of identification from the department, engrave or permanently affix that serial number or mark of identification to the firearm in accordance with regulations prescribed by the department pursuant to Section 29182 and in a manner that meets or exceeds the requirements imposed on licensed importers and licensed manufacturers of firearms pursuant to subsection (i) of Section 923 of Title 18 of the United States Code and regulations issued pursuant thereto. If the firearm is manufactured or assembled from polymer plastic, 3.7 ounces of material type 17-4 PH stainless steel shall be embedded within the plastic upon fabrication or construction.~~

~~(3) After the serial number provided by the department is engraved or otherwise permanently affixed to the firearm, notify the department of that fact in a manner and within a time period~~

specified by the department and with sufficient information to identify the owner of the firearm, the unique serial number or mark of identification provided by the department, and the firearm in a manner prescribed by the department.

(d) (1) Except by operation of law, a person, corporation, or firm that is not a federally licensed firearms manufacturer shall not sell or transfer ownership of a firearm, as defined in subdivision (g) of Section 16520, if any of the following are true:

(A) That person, corporation, or firm manufactured or assembled the firearm.

(B) That person, corporation, or firm knowingly caused the firearm to be manufactured or assembled by a person, corporation, or firm that is not a federally licensed firearms manufacturer.

(C) That person, corporation, or firm is aware that the firearm was manufactured or assembled by a person, corporation, or firm that is not a federally licensed firearms manufacturer.

(2) Paragraph (1) does not apply to the transfer, surrender, or sale of a firearm to a law enforcement agency.

(3) Any firearms confiscated by law enforcement that do not bear an engraved serial number or other mark of identification pursuant to subdivision (b) or (c), or a firearm surrendered, transferred, or sold to a law enforcement agency pursuant to paragraph (2) shall be destroyed as provided in Section 18005.

(4) Sections 26500 and 27545, and subdivision (a) of Section 31615, do not apply to the transfer, sale, or surrender of firearms to a law enforcement agency pursuant to paragraph (2).

(e) A person, corporation, or firm shall not knowingly allow, facilitate, aid, or abet the manufacture or assembling of a firearm by a person who is within any of the classes identified by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(f) A person, corporation, or firm shall not knowingly manufacture or assemble, or knowingly cause, allow, facilitate, aid, or abet the manufacture or assembling of, a firearm that is not imprinted with a valid state or federal serial number or mark of identification.

(g) A violation of this section is punishable by imprisonment pursuant to subdivision (h) of Section 1170. Each firearm found to be in violation of this section constitutes a distinct and separate offense. This section does not preclude prosecution under any other law providing for a greater penalty.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

~~district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

(a) The Department of Justice shall collect and report data on arrests made by law enforcement agencies for offenses related to firearms without a valid state or federal serial number. The department shall collect and report the following data:

(1) The number of arrests pursuant to Penal Code section 23920.

(2) The number of arrests pursuant to Penal Code section 29180.

(3) The disposition of arrests pursuant to Penal Code sections 23920 or 29180, including information about whether an arrestee was booked, cited, or released from custody.

(4) Starting on January 1, 2029, the disposition of prosecutions for violations of Penal Code sections 23920 or 29180 reported to the department pursuant to subsection (e) of Section 13370 of the Penal Code, including, but not limited to, whether charges were dismissed, the defendant was acquitted or convicted, or whether the charges were resolved on other grounds, including as the result of a plea bargain.

(b) The department shall issue a report to the Legislature on or before January 1, 2025, and annually thereafter, that includes the data collected pursuant to subsection (a) of this section, except that data collected pursuant to subparagraph (4) of subdivision (a) need not be reported until the department begins reporting the data pursuant to subparagraph (4) of subsection (d) of Section 13370 of the Penal Code.

(c) The report submitted pursuant to subsection (b) shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect until January 1, 2033, and as of that date is repealed.

Date of Hearing: March 7, 2023
Chief Counsel: Sandy Uribe

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

AB 257 (Hoover) – As Amended February 23, 2023

SUMMARY: Makes it a crime to camp on any street, sidewalk, or other public property within 500 feet of a school, daycare, playground or youth center. Specifically, **this bill**:

1) Prohibits a person from camping on any street, sidewalk, or other public property within 500 feet of a school, daycare, playground or youth center.

2) Defines "youth center" as "any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities."

3) Defines "camp" as engaging in one of the following activities at a single camping area for more than six consecutive hours:

   a) Place, pitch, or occupy an encampment;

   b) Live temporarily in a camp facility (including tents, huts, vehicles, or temporary shelter), camping area, or outdoors; or,

   c) Use camp paraphernalia, including: bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks, and cooking facilities and equipment.

4) Defines "encampment" as "three or more persons camping together within 50 feet of each other and without permitted electrical power, permitted running water, or permitted bathroom facilities."

5) States that "camping area" includes the "primary physical area of occupation of a single camping person."

6) Punishes this conduct as an infraction or a misdemeanor.

7) Provides that if prosecuted as an infraction, the punishment consists of a fine not to exceed $10.

8) Provides that if prosecuted as a misdemeanor, the punishment consists of up to five days' incarceration in the county jail, or a fine not to exceed $25, or both.

9) States that a person being prosecuted for a misdemeanor violation may be eligible for a diversion program, such as mental health diversion, or misdemeanor diversion.

EXISTING FEDERAL LAW:

Prohibits the imposition of excessive fines and the infliction of cruel and unusual punishments. (U.S. Const., Eighth Amend.)

EXISTING STATE LAW:

1) Provides that any person who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (e).)

2) Provides that any person who is found in any public place under the influence of liquor, any drug or a combination thereof, in a condition that they are unable to exercise care for their own safety or the safety of others, or who by reason of being under the influence of liquor, drugs, or a combination thereof, interferes with, or obstructs, or prevents the free use of any street, sidewalk, or other public way is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (f).)

3) States that if a person has committed disorderly conduct based in being under the influence of drugs or alcohol, a peace officer, if reasonably able to do so, shall place the person, or cause the person to be placed, in civil protective custody. The person shall be taken to a facility for 72-hour treatment and evaluation of inebriates. (Pen. Code, § 647, subd. (g).)

4) Provides that any person who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (h).)

5) Defines a public nuisance as "[a]nything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway." (Pen. Code, § 370.)

6) States that any person who commits any public nuisance, the punishment for which is not otherwise prescribed, is guilty of a misdemeanor. (Pen. Code, § 372.)

7) Provides that any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to $400, or by both. (Pen. Code, § 602.1, subd. (a).)

8) Provides that any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public, by obstructing or intimidating those attempting to carry on business, or those persons there to transact business with the public agency, and who refuses to leave the premises of the public agency after being requested to leave is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90

days, or by a fine of up to $400, or by both. (Pen. Code, § 602.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As our local communities work toward mental health and housing solutions on homelessness, it is critical that the Legislature act to ensure our most sensitive public spaces are kept safe. No parent should be afraid to let their kids walk to school or worry about finding needles on their playgrounds, but that is the current experience for far too many families across our state. This legislation would change that.

   "Furthermore, last year several cities in California, including Sacramento and Los Angeles, voted for similar measures at the local level.

   "According to the LAO, $20 billion taxpayer dollars have been spent on homelessness over the past 6 budget years. Yet chronic homelessness has risen 77% in California. Since 2019 homelessness in Sacramento County has grown by 67%, recently surpassing San Francisco for the first time. It's time for a new approach."

2) **Eighth Amendment Implications**: Local agencies that have passed ordinances prohibiting camping have faced repeated litigation challenging their ability to prohibit camping in their jurisdiction when individuals experiencing homelessness lack shelter or other housing options.

   In *Martin v. City of Boise* (9th Cir. 2019) 920 F.3d 584, a group of homeless individuals sued the city of Boise, ID seeking relief from criminal prosecution pursuant to city ordinances related to public camping. Plaintiffs argued that the ordinances violated the Cruel and Unusual Punishments Clause of the Eighth Amendment. (*Id.* at 606.) This clause proscribes not only excessive punishment, but also places limits on what the government may criminalize in the first place. (*Id.* at 615.) It has been found to prohibit the criminalization of "status." (*Id.* at 616, citing *Robinson v. California* (1962) 370 U.S. 660 [overturning a California law which made the "status' of a narcotics addict a criminal offense].)

   The Court of Appeals held that the Eighth Amendment prohibits the imposition of criminal penalties for sleeping outside on public property for homeless individuals who cannot obtain shelter. (*Id.* at pp. 615, 616, & 617.) In other words, the government cannot prosecute homeless people for sleeping in public if there are more homeless individuals in a jurisdiction than the number of available shelter beds. (*Id.* at 617.) The court observed that the conduct at issue in the ordinance -sitting, lying, and sleeping- was involuntary and inseparable from status in light of the fact that human beings biologically have a need to sleep. (*Ibid.*) The court did note that its holding was not meant to suggest that a jurisdiction without sufficient shelter beds could never criminalize sleeping outside; it left open the possibility that restrictions on sleeping outside at particular times or near particular places might be constitutional. (*Ibid.*, fn. 8.)

   In this respect, it should be noted that California has one of the worst homelessness rates in the nation. According to the US Department of Housing and Urban Development's (HUD)

2022 Annual Homeless Assessment Report to Congress, in January 2022 California accounted for 30% of the nation's homeless population (or 171,521 people). California accounted for half of all unsheltered people in the country (115,491 people) including people living in vehicles, abandoned buildings, parks, or on the street. In California, 67 percent of people experiencing homelessness did so outdoors. This is more than nine times the number of unsheltered people in the state with the next highest number, Washington. California also had the highest rate of homelessness, with 44 people experiencing homelessness out of every 10,000 people in the state. (See The 2022 Annual Homelessness Assessment Report (AHAR) to Congress Part 1: Point-In-Time Estimates of Homelessness, December 2022, p. 16, 2022.)

According to the California Interagency Council on Homelessness 2021 Statewide Homelesness Assessment to the Legislature, the Housing Inventory Count (HIC), which depicts general trends in the provision of shelter and permanent Housing, shows about 60,500 total shelter/interim housing beds statewide.
(see *Legislative Report: Statewide Homelessness Landscape Assessment*, p. 72; https://bcsh.ca.gov/calich/documents/homelessness_assessment.pdf .) Given that there are around 171,500 people in the HUD point-in-time count, that's roughly 1 shelter bed for every 3 people.

3) **Due Process Issues**: This bill prohibits camping "on public property within 500 feet of a school, daycare center, playground, or youth center." For context, 500 feet is roughly the equivalent of a 50 story building, half of the Eiffel Tower, or 1.4 football fields. (See e.g., https://dimensionofstuff.com/9-things-that-are-about-500-feet-long/) This bill defines a "youth center" as "any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities." Notably, this bill does not contain a requirement that the person knowingly violate its provisions.

While it may be obvious where playgrounds or schools are located, that is not necessarily the case with day care centers and youth centers. Some daycares are located within residential homes. Others can be located within office buildings or churches. For example, there is a day care center in the Secretary of State building, and until recently there was a daycare center within the Legislative Office Building. This would not have been known to a passerby. Similarly, what constitutes a "youth center" may also not be known to the average person. Does a bowling alley qualify? What about a public swimming pool? Therefore, with regards to these two types of locations, arguably the proposed statute is unconstitutionally vague.

The Fifth Amendment to the U.S. Constitution prohibits the taking of a person's liberty under a criminal law that is so vague it fails to provide adequate notice of the conduct it proscribes or allows for arbitrary enforcement. A criminal statute must give fair warning of the conduct that it makes criminal. (*Bouie v. Columbia* (1964) 378 U.S. 347, 350-351.) "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." (*United States v. Harriss* (1954) 347 U.S. 612, 617.)

The vagueness doctrine, which derives from the due process concept of fair notice, "bars the government from enforcing a provision that 'forbids or requires the doing of an act in terms so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.'" (*People v. Hall* (2017) 2 Cal.5th 494, 500.) A statute is unconstitutionally vague if it fails to provide adequate notice of the proscribed conduct or lacks "sufficiently definite guidelines . . . in order to prevent arbitrary and discriminatory enforcement." (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106-1107.)

There is an argument to be made that at least with regards to some of the limitations, this bill fails to give adequate notice of the proscribed conduct and also lacks sufficient guidelines of what qualifies as a youth center to allow for arbitrary enforcement.

4) **Fines**: This bill would provide that if a violation is prosecuted as an infraction, a fine of up to $10 can be imposed, and if a violation is prosecuted as a misdemeanor, a fine of up to $25 can be imposed.

As a preliminary matter, it should be noted that there are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was charged with a misdemeanor violation and fined $10 (as opposed to the maximum amount of $25) as the fine for this new criminal offense, the following penalty assessments would be imposed pursuant to the Penal Code and the California Government Code:

Base Fine:	$ 10
Penal Code 1464 state penalty on fines:	$ 10 ($10 for every $10)
Penal Code 1465.7 state surcharge:	$ 2 (20% surcharge)
Penal Code 1465.8 court operation assessment:	$ 40 ($40 fee per criminal offense)
Government Code 70372 court construction penalty:	$ 5 ($5 for every $10)
Government Code 70373 assessment:	$ 30 ($30 for misdemeanors)
Government Code 76000 penalty:	$ 7 ($7 for every $10)
Government Code 76000.5 EMS penalty:	$ 2 ($2 for every $10)
Government Code 76104.6 DNA fund penalty:	$ 1 ($1 for every $10)
Government Code 76104.7 addt'l DNA fund penalty:	$ 4 ($4 for every $10)
Total Fine with Assessments:	$ 101

While $101 might be insignificant for some individuals, arguably not so for a homeless person. This amount could make the difference between going hungry for several days or buying basic necessities. Moreover, some homeless individuals might not be able to pay even this amount which may result in other criminal consequences, such as the issuance of a bench warrant for people who do not pay or appear in court, leading to arrests. These citations, in many instances, are counterproductive because criminally punishing a person for sleeping will not stop the biological need to sleep.

5) **Diversion Provision**: This bill specifies that a person charged with a misdemeanor violation of the encampment prohibition may be eligible for existing diversion programs, such as misdemeanor diversion or mental health diversion. However, it is unclear why a person subject to imprisonment for up to five days in jail and/or a fine of $25 plus assessments would be incentivized to participate in a diversion program lasting much longer. For

example, participation in mental health diversion under Penal Code 1001.36 lasts up to one year for misdemeanors. (Pen. Code, § 1001.36, subd. (f)(1)(C)(ii).)

Moreover, there are a number of requirements for each diversion program. For example, participation in mental health diversion requires participation in inpatient or outpatient treatment. (Pen. Code, § 1001.36, subd. (c)(3).) If a person cannot afford treatment, the court may make a referral to a county mental health agency, or any existing collaborative court; however, the person will only be able to avail themselves of a treatment program if: the designated entity has agreed to accept responsibility for the treatment, and there are available resources. (Pen. Code, § 1001.36, subd. (f)(1)(A)(ii).) So even if the individual wanted to participate and otherwise qualified, participation is by no means guaranteed.

6) **Argument in Support**: According to the *City of Eastvale*, "More than 172,000 Californians are homeless, an increase of 22,000 over the last three years. While California has less than 12% of the nation's population, our state has 30% of the nation's homeless individuals and 50% of the country's unsheltered population. Over 40 states provide shelter to a majority of their homeless, whereas California has failed to shelter two-thirds of its homeless population. Furthermore, over the last 15 years, California's homeless population has grown over 20% while national homelessness has declined by 10%.

'Homeless encampments pose health and safety concerns to city inhabitants, but children especially should be protected on their way to school or on their playgrounds. California is spending $12 billion on homelessness between 2021 and 2023 and according to the Legislative Analyst's Office, $20 billion has been spent on homelessness over the past six budget years. Despite the state's investment, the number of homeless and homeless encampments continue to increase.

"AB 257 would protect children by banning homeless encampments within 500 feet of our schools, daycare centers, playgrounds, and youth centers. To avoid penalties, the bill gives homeless individuals diversion options to receive the help they need while providing protected public areas for children."

7) **Argument in Opposition**: According to *Western Center on Law and Poverty*, *ACLU California Action, Disability Rights California*, *Housing California*, and *Public Advocates*, "Despite recent amendments which slightly narrow the scope of the bill, we remain gravely concerned that AB 257 would further demonize, destabilize, criminalize, and violate the human rights of unhoused Californians while failing to address the underlying driver of homelessness: the lack of affordable and accessible housing to Californians with the lowest incomes.

"AB 257 would effectively make it a crime for Californians who lack safe and stable housing to exist in vast swaths of public space, and perpetuates a 'policing-first' approach to addressing homelessness based on prejudices that unhoused people are a danger to children. The criminal penalties associated with violations of this law would also create barriers for unhoused Californains to secure housing, making it harder for them to exit homelessness. Further, given the fact that Black people and other people of color disproportionately live without housing or shelter and are unjustly targeted by law enforcement, AB 257 also reinforces dangerous racialized stereotypes that continue to reproduce systemic inequity in

housing, health, employment, and legal outcomes.

"Only housing ends homelessness, and at present, California is experiencing a housing affordability crisis decades in the making, with a statewide shortage of 1.2 million affordable homes. Without housing options, criminalizing basic activities of living cannot solve homelessness and may make it worse. As shown by recent research and reporting from across the state, sweeping encampments and criminalizing unhoused people with nowhere else to go is traumatic, destabilizing, costly, and ineffective. Further, courts have established that criminalizing unhoused people because they are homeless violates their constitutional and civil rights."

8) **Related Legislation**: SB 31 (Jones), would prohibit a person from sitting, lying, sleeping, or storing, using, maintaining, or placing personal property upon any street, sidewalk, or other public right-of-way within 1000 feet of a school, daycare center, park, or library. SB 31 is pending hearing in the Senate Public Safety Committee.

9) **Prior Legislation**:

   a) AB 2633 (Cooley) of the 2021-2022 Legislative Session, would have allowed the Sacramento County Board of Supervisors to order the removal of persons engaging in the act of unpermitted camping or the clearing of unpermitted campsites from American River Parkway. The hearing on AB 2633 in the Senate Government and Finance Committee was cancelled at the request of the author.

   b) AB 5 (Ammiano), of the 2013-2014 Legislative Session, would have established a number of rights for people experiencing homelessness. Among other provisions, AB 5 would have provided the right to rest in a public space in the same manner as any other person without being subject to criminal or civil sanctions, harassment, or arrest because they were experiencing homelessness, as long as that rest did not maliciously or substantially obstruct a passageway. AB 5 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association for Health, Physical Education, Recreation & Dance
California Coalition of School Safety Professionals
City of Eastvale
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association

Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Take a Stand Stanislaus
Upland Police Officers Association

Opposition

ACLU California Action
Aids Healthcare Foundation
All Home
California Housing Partnership Corporation
California Public Defenders Association (CPDA)
Communities United for Restorative Youth Justice (CURYJ)
Corporation for Supportive Housing
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Healing and Justice Center
Homelessness Housing California
Housing Action Coalition
How to Adu
Initiate Justice
Initiate Justice Action
Inner City Law Center
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Mountain View Yimby
National Homelessness Law Center
Northern Neighbors Sf
Norwalk Unides
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
Public Advocates
Sacramento Homeless Organizing Committee
San Francisco Public Defender
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
The Bail Project
The United Way of Greater Los Angeles

Urban Environmentalists
Western Center on Law & Poverty
Yimby Action

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

Date of Hearing: March 7, 2023
Counsel: Mureed Rasool

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

AB 327 (Jones-Sawyer) – As Introduced January 30, 2023

As Proposed to be Amended in Committee

SUMMARY: Requires the California Department of Justice (DOJ), by January 1, 2025, to complete the transition of all California's crime statistics reporting so that it is in alignment with federal reporting requirements. Specifically, **this bill**:

1) Requires the DOJ, January 1, 2025, to complete the transition of all California's crime data so that it is in alignment with the federal National Incident-Based Reporting System (NIBRS).

2) Requires local law enforcement and other agencies dealing with criminal offenses to maintain and report to the DOJ crime statistics in a format aligned with NIBRS.

3) Makes legislative findings and declarations regarding the importance of detailed crime statistics collection and reporting.

EXISTING LAW:

1) Requires the DOJ to collect data from specified agencies regarding criminal offenses. (Pen. Code, § 13010, subd. (a).)

2) Requires the DOJ to prepare and distribute forms and electronic means that agencies can use when reporting criminal statistics to the department. (Pen. Code, § 13010, subd. (b).)

3) Provides that the DOJ may recommend the form and content of records that certain agencies use to ensure accurate reporting. (Pen. Code, § 13010, subd. (c).)

4) Requires the DOJ to supply federal agencies criminal statistics upon request. (Pen. Code, § 13010, subd. (f).)

5) States that the DOJ must annually make available information relating to criminal statistics through their OpenJustice Web portal, and to report on special aspects of criminal statistics. (Pen. Code, § 13010, subd. (g).)

6) Requires specified agencies dealing with crimes or criminals or delinquency to report crime statistics to the Attorney General, in a time and manner that the Attorney General prescribes. (Pen. Code, § 13020.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is imperative that law enforcement agencies maintain transparency. Not only does it allow policy makers and leaders to more effectively address crime and police brutality, but it also provides citizens and civilians with information they deserve. Incident-based crime reporting allows law enforcement agencies to collect more detailed information on a wider range of offenses and shed light on the many facets of crime. That kind of accurate and comprehensive data is needed to ensure that we adequately address the most pressing needs in our communities. By requiring a transition to the incident-based reporting system, California will be complying with federal standards and will be better equipped to address crime and its root causes."

2) **Recent National Crime Data Collection Issues**: For decades, the Federal Bureau of Investigation (FBI) has collected crime data from law enforcement agencies across the country and released annual reports detailing general crime trends in the nation. (U.S. Department of Justice. *New and Better Crime Data for the Nation.* (Oct. 5, 2022.) <https://www.justice.gov/opa/blog/new-and-better-crime-data-nation> [as of Feb. 24, 2023].) In 2016, the FBI informed all states that in five years it would be transitioning from its old crime reporting program to a new one that captures more information about criminal incidents and their surrounding circumstances. (*Ibid.*) The new system, the National Incident-Based Reporting System (NIBRS), would include details like time and location of the crime, whether an arrest was made, whether multiple offenses occurred, and demographic information about victims and offenders, which would help give policymakers, researchers, and the public a clearer picture of crime in America. (*Ibid.*) During the transitional period, the U.S. government provided over $120 million to help state and local law enforcement agencies to be able to report through the new system. (*Ibid.*)

   Not all law enforcement agencies have transitioned to the new system; some of the most populous states such as New York, Florida, and California reported at exceptionally low levels. (LA Times. *FBI's latest hate crimes report missing crucial data from California, New York and Florida.* (Dec. 12, 2022) <https://www.latimes.com/world-nation/story/2022-12-12/fbis-latest-hate-crimes-report-missing-crucial-data-from-california-new-york-and-florida> [as of Feb. 24, 2023].) In 2021, only 15 of 740 Californian law enforcement agencies submitted their crime information to the FBI through the new data system, and only 2 of Florida's 757 agencies were able to submit theirs. (*Id.*) Due to fewer agencies reporting because they cannot comply with the FBI requirements, there is a large gap in the numbers that may result in giving an inaccurate picture of crime in the U.S. (*Id.*) This gap comes at a time when, according to certain civil rights groups, hate crimes are rising significantly. (*Id.*) The FBI has reported that approximately 7,200 hate crimes occurred in 2021. (*Id.*) However, that number was based on only 65% of the nation's law enforcement agencies that submitted their report to the FBI, down from 93% in 2020. (*Id.*) The Center for the Study of Hate Groups and Extremism at Cal State San Bernardino stated that if just California and New York were included, the national total for hate crimes would actually exceed 9,000, which only would be the second time that has taken place since the FBI began keeping records of hate crimes in 1991. (*Id.*)

   Although some observers have posited that large agencies may be wary of the new system

since it will record slightly more crimes than the new one, a number of unexpected events such as COVID-19, the murder of George Floyd, calls for police reform, and the spike in homicides and shooting may have played a part. (The Marshall Project. *What Can FBI Data Say About Crime in 2021? It's Too Unreliable to Tell.* (Jun. 14, 2022.) <https://www.themarshallproject.org/2022/06/14/what-did-fbi-data-say-about-crime-in-2021-it-s-too-unreliable-to-tell> [as of Feb. 26, 2023].) The issue also seems to be administrative obstacles in updating the system. (*Id.*) According to the DOJ, over 100 California agencies are expected to make the transition later this year, however, that will likely not include the San Francisco Police Department (SFPD). (*Id.*) Their chief information officer stated that although the department has asked the city for $14 million to assist the transition, SFPD still does not plan on submitting data to the FBI until 2025. (*Id.*) These types of transitions can take years according to an employee at a software company that deals with government agency record management systems. (*Id.*)

While these transitions can take years, and while no one was expecting a disruption like COVID-19, it has been over six years since the FBI made the announcement about the change.

3) **Efforts to Update California's Reporting System**: In response to the FBI's announcement of the transition to NIBRS, California enacted a statute in 2016 requiring the DOJ to release an annual report through 2019 detailing its efforts and progress. (Pen. Code, § 13010, subd. (i).) In 2017, the California DOJ stated that it had procured a vendor to develop a strategic transition plan that would include costs and a realistic timetable. (DOJ. *NIBRS Annual Transition Progress Report.* (2017.) <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/nibrs-tpr/nibrs-tpr-2017.pdf> [as of Feb. 26, 2023].) In its 2019-20 Biennial Report the DOJ said that it was working with local law enforcement agencies to update their systems and that it was on track and working towards implementation by the FBI's 2021 deadline. (DOJ. *Biennial Report 2019-2020.* <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/biennial-2019-2020.pdf> [as of Feb. 26, 2023].) As noted above, 2019 was the last year the DOJ was required to submit an update under state law.

In August of 2022, the federal government provided millions of dollars in funding to bolster the LA Police Department, LA Sheriff's Office, and the San Francisco Police Departments' transition more expediently. (U.S. Bureau of Justice Statistics. *FY 2022 California Law Enforcement Transition to NIBRS—Rapid Deployment Model Project.* (Aug. 5, 2022) <https://bjs.ojp.gov/funding/opportunities/o-bjs-2022-171414> [as of Feb. 26, 2023]; U.S. Bureau of Justice Statistics. *California Department of Justice Law Enforcement Agency Rapid Deployment Model.* (Aug. 31, 2022.) <https://bjs.ojp.gov/funding/awards/15pbjs-22-gk-01202-noha> [as of Feb. 26, 2023].) Unfortunately, as mentioned above, those efforts were unsuccessful.

This bill would require the DOJ and local law enforcement agencies to comply with the federal NIBRS crime data standards by January 1, 2025. As such, this bill would ensure that all of California's local law enforcement agencies will update their crime data systems and be in alignment with the more comprehensive federal reporting system.

4) **Argument in Support**: According to the bill's sponsor, the *Prosecutors Alliance of California*, "The FBI's Uniform Crime Reporting (UCR) program provides a nationwide

view of crime based on the submission of crime information by law enforcement agencies throughout the country. This information is used by elected officials, law enforcement, policy makers and academics to track trends in crime and develop effective policy responses to increase community health and safety.

"In 2015, the FBI announced that it would transition the Uniform Crime Reporting system from a summary reporting system to a National Incident-Based Reporting System. Incident-based reporting captures details on each single crime incident—as well as on separate offenses within the same incident—including information on victims, relationships between victims and those who committed the offenses, arrestees, and property involved in crimes. Incident-based reporting provides greater specificity in reporting offenses, collects more detailed information, helps give context to specific crime problems, and provides greater analytic flexibility.

"Law enforcement agencies nationwide were encouraged to make the switch to incident-based reporting by January, 2021. The California Legislature allocated funding for local law enforcement and established benchmarks for transitioning. Existing law requires the Department of Justice to report to the Legislature on the progress of reporting crime statistics data to the federal government in compliance with the National Incident-Based Reporting System.

"Despite receiving ample time and tens of millions of dollars to make the transition, only two percent of California law enforcement agencies reported crime data in 2021 – less than every other state except Florida. This failure to report crime data to the FBI undermines efforts to understand and address crime and to effectively distribute law enforcement resources.

"AB 327 will require local law enforcement agencies to report crime data in incident-based fashion beginning January 1, 2024. AB 327 will thus ensure that California reports complete crime data in the appropriate format to the FBI, allowing policy makers to have access to this critically important data."

5) **Prior Legislation**: AB 2524 (Irwin), Chapter 418, Statutes of 2016, required in part that the DOJ release an annual report through 2019 detailing progress on California's crime data reporting mechanism to be in alignment with federal reporting requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

Prosecutors Alliance California (Sponsor)
ACLU California Action
Center on Juvenile and Criminal Justice
Ella Baker Center for Human Rights
F.u.e.l.- Families United to End Lwop
Initiate Justice

Opposition

None Received

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

AMENDMENTS TO ASSEMBLY BILL NO. 327

Amendment 1
On page 2, in line 7, strike out "legislature" and insert:

Legislature

Amendment 2
On page 3, strike out line 27 and insert:

System by January 1, 2025.

Amendment 3
On page 3, in line 31, strike out "attorney" and insert:

attorney,

Amendment 4
On page 3, in line 33, strike out "Health and", strike out lines 34 and 35, in line 36, strike out "State Department of Health," and insert:

the California Health and Human Services Agency, Department of Corrections and Rehabilitation, Board of Juvenile Hearings, Board of Parole Hearings,

Amendment 5
On page 3, in line 37, strike out "Liquor Control Administrator," and insert:

the Department of Alcoholic Beverage Control,

Date of Hearing: March 7, 2023
Chief Counsel: Sandy Uribe

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

AB 328 (Essayli) – As Introduced January 30, 2023

SUMMARY: Prohibits the court from dismissing a firearm enhancement under the 10-20-life law, except as specified. Specifically, **this bill**: Eliminates judicial discretion to dismiss or strike an allegation under the 10-20-life law except when:

1) A principal involved in a gang-related offense did not personally use or intentionally discharge the firearm; or,

2) The firearm was unloaded at the time of the commission of the offense.

EXISTING LAW:

1) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses[1] is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in great bodily injury (GBI) or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.[2] (Pen. Code, § 12022.53, subds. (b)-(d).)

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

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

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

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

4) Authorizes the court, either on its own motion or upon motion of the district attorney, and in furtherance of justice, to order an action to be dismissed. The reasons for the dismissal must be stated orally on the record, and entered in the minutes, if requested by either party. (Pen. Code, § 1385, subd. (a).)

5) Provides that if the court has the authority to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. (Pen. Code, § 1385, subd. (b)(1).)

6) States that, notwithstanding any other law, the sentencing court "shall dismiss" an enhancement "if it is in the furtherance of justice to do so" except if dismissal of that enhancement is prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)

7) Instructs the court to consider the following factors in determining whether it is in the interests of justice to dismiss an enhancement:

   a) Application of the enhancement would result in a discriminatory racial impact, as specified;

   b) Multiple enhancements are alleged in a single case, in which case all enhancements but one shall be dismissed;

   c) Application of the enhancement could result in a sentence of over 20 years, in which case the enhancement shall be dismissed;

   d) The current offense is connected to mental illness, as specified;

   e) The current offense is connected to prior victimization or childhood trauma, as specified;

   f) The current offense is not a violent felony, as specified;

   g) The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case;

   h) The enhancement is based on a prior conviction that is over five years old;

   i) Though a firearm was used in the current offense, it was inoperable or unloaded. (Pen. Code, § 1385, subd. (c)(3)(A)-(I).)

8) Requires the court to consider and afford great weight to evidence offered by the defendant to prove that any of the aforementioned mitigating circumstances are present. (Pen. Code, § 1385, subd. (c)(2).)

9) States that proof of the presence of one or more of these mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would "endanger public safety," meaning that there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others. (Pen. Code, § 1385, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "What we're missing in California is enforcement and deterrence. We're not missing gun laws, we have more than one hundred gun laws on the books. Serious crimes need serious punishments and people need to be put on notice that if you use a firearm in the commission of a felony you are going to be locked up for a long time."

2) **Background of "Use of a Gun and You're Done" Law (i.e., the 10-20-life Firearm Law)**: In 1997, the Legislature passed the "Use a Gun and You're Done" law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Subdivision (b) provides a 10-year enhancement for using a firearm; subdivision (c), a 20-year enhancement for intentionally firing the gun; and subdivision (d), a 25-years-to-life enhancement for intentional discharge causing great bodily injury or death to someone other than an accomplice.

   "Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it." (California Budget and Policy Center (2015) *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.*)

   Deterrence was a driving factor behind this legislation: "The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime." (AB 4 (Bordonaro), Chapter 503, Statutes of 1997.)

   In 2017, the Legislature passed SB 620 (Bradford), Chapter 682, Statutes of 2017. This legislation allowed a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

   As to the exercise of that judicial discretion, CDCR has informed the committee in the three years preceding the court's ability to strike an enhancement under the 10-20-Life firearm law, there were 6,255 enhancements imposed under the law on 2,845 offenders[3]; and in the

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[3] The law prohibits imposition of more than one enhancement under the statute per *crime*, but not per *case*. (See Pen. Code, § 12022.53, subd. (f).) Therefore, an offender who is convicted of two or more crimes using or discharging the same gun, can receive multiple enhancements under the 10-20-Life Law. (See e.g. *People v. Palacios* (2007) 41 Cal.4th 720, 733 [Where defendant was convicted of attempted murder, kidnapping for robbery, and kidnapping for

three years after judicial discretion to strike the enhancement was implemented, there were 6,078 enhancements pursuant to the statute imposed on 2,672 offenders as follows:

Date Range	Number of Offenders	Number of PC 12002.53(b)	Number of PC 12002.53(c)	Number of PC 12002.53(d)	Number of Enhancements
2015 - 2017	2,845	3,239	1,227	1,789	6,225
2018 - 2021	2,672	3.089	1,181	1,808	6,078

Based on these figures, it appears that in the first three years in which the courts were given discretion to dismiss enhancements under the 10-20-Life rule, judges continued to impose these enhancements at about the same rate as before they lacked discretion to strike them.

This bill would eliminate the discretion authorized by SB 620 (Bradford) except in cases in which either the firearm was not loaded or in cases in which a principal in a gang-related offense did not personally use or intentionally discharge with or without causing injury.

3) **Research on the Deterrent Effect and Impact on State Prisons:** In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.)

The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the "significant sentencing enhancements" of the 10-20-life firearm law. (Little Hoover Commission, *supra*, at p.9.)

According to the 2020 Annual Report by the Committee on the Revision of the Penal Code, over 80% of the people sentenced to state prison are serving a sentence lengthened by an enhancement, with some of the most common enhancements including firearm-use enhancements. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code, at p. 37-38, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf.) Citing data provided by the California Department of Correction and Rehabilitation's Office of Research, the committee noted that these enhancements are applied disproportionately against people of color and people suffering from mental illness. (*Id.* at p. 38.)

4) **Argument in Support**: According to the *Riverside County District Attorney's Office*, "Violent criminals who use firearms should be appropriately punished when these dangerous and lethal weapons are used in a crime. As Governor Newsom recently recognized, 'gun violence … destroys our communities and our sense of safety and belonging,' and as such, he vowed to 'doubl[e] down on gun safety.' (https:/www.gov.ca.gov/2023/02/02/governor-

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carjacking based on a single act against a single victim, the imposition of sentence for three Penal Code section 12022.53 enhancements was proper and did not violate the bar against multiple punishment].)

newsom-takes-action-to-strengthen-californias-gun-safety-laws/) Homicides are up in our state and the most common weapons used in these homicides are firearms. This necessitates a revisiting of SB 620 enacted in 2018.

"With the passage of SB 620, the Legislature granted judges the power to strike or dismiss the gun enhancement which was prohibited prior to the passage of this law. When a judge exercises this power, they re-victimize the victims of these crimes and jeopardize public safety. When an individual is convicted by a jury of a qualifying crime, and the gun enhancement is found true by proof beyond a reasonable doubt, a judge should sentence the defendant consecutively, as was the law prior to the enactment of SB 620 in 2018. These mandatory gun enhancements ensured the offender would be off the streets, and by reviving these mandatory sentences, we would stem the gun violence that Governor Newsom recognized is destroying our communities."

5) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "Sentencing enhancements do not prevent crime, and will not will not address gun violence in any demonstrable way. Enhancements are, however, one of the drivers of mass incarceration, a systematic means of economically and politically disenfranchising Black, Latinx and Indigenous families and communities. Mass incarceration is a human rights issue and an economic disaster, and was built one bad bill at a time.

"There is extensive research that proves that overly long sentences, and the threat of such sentences do not reduce or prevent crime. In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies and their positive and negative effects on crime rates and community safety. Among their conclusions were:

> 'Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should re-examine policies regarding mandatory prison sentences and long sentences.'

"Additionally, a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design Who Pays, The True Cost of Incarceration on Families details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems.

"Subject to prosecutorial discretion, enhancements serve during the plea bargain phase to bully low income defendants into admitting guilt even in weak cases, and/or accepting unjustly long sentences. If a defendant asserts their Constitutionally guaranteed right to a trial by jury, the prosecutor may threaten a 'trial tax,' stacking charges and enhancements. The US Department of Justice published a research summary on plea bargain and charging practices in the US and among their findings: that those who go to trial are more likely to receive harsher sentences, and that the majority of research found that Black Americans are punished more harshly than whites.

"Again – harsher sentences do not deter crime. People do not calculate the number of years in prison before acting. They are only deterred by fear of apprehension. California already spends too much money on mass incarceration, having built far more prisons than universities in the last 30 years. And the harms done to families and communities undermine the very intent of law to protect and enhance public safety.

"Taking away the court's ability to dismiss firearm enhancements will not promote public safety, and will result in racially disparate and excessively long sentences."

6) **Related Legislation**: AB 27 (Ta), would exempt specified firearm enhancements from the presumption that a court must dismiss an enhancement if it is in the furtherance of justice to do so and does not endanger public safety. AB 27 failed passage in this committee.

7) **Prior Legislation**:

   a) AB 1509 (Lee), of the 2021-2022 Legislative Session, would have repealed several firearm enhancements, reduced the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two, or three years, and authorized recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.

   b) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

   c) AB 4 (Bordonaro), Chapter 503, Statutes of 1997, provided for the 10-20-life firearm law.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association

Riverside County District Attorney
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Pacific Juvenile Defender Center
San Francisco Public Defender

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

Date of Hearing: March 7, 2023
Counsel: Cheryl Anderson

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

AB 330 (Dixon) – As Amended February 28, 2023

SUMMARY: Adds instruction on the issuance of Victims of Domestic Violence cards to law enforcement basic training. Requires additional information on the card. Requires the Office of Emergency Services (CalOES) to develop a model card that can be modified by cities and counties. Specifically, **this bill**:

1) Adds the issuance of Victims of Domestic Violence cards to the list of procedures and techniques that are part of the course of basic training for law enforcement officers in the handling of domestic violence complaints.

2) Requires the following changes to domestic violence cards:

   a) The card must be a different color than other cards issued by officers;

   b) The card must include a disclaimer advising that this information is not necessarily all information available to the victim, is not legal advice, and is not a guarantee of any victim's rights or eligibility for any specific benefits or services;

   c) The card must be available in languages other than English, including a minimum of the five most commonly spoken languages in the county; and

   d) The card must include the following additional information: the definition of domestic violence, the statute of limitations for domestic violence, a notation that the CalEOS website contains additional information on domestic violence, and contact information for additional assistance, including, but not limited to, the National Domestic Violence Hotline and internet website.

3) Specifies that act or omission of furnishing written notice to victims at the scene of a domestic violence incident constitutes a discretionary act for which there is no liability for an injury resulting from that act or omission.

4) Provides that CalOES must develop a model Victims of Domestic Violence card that can be modified by cities and counties.

5) Requires CalOES to post on a website maintained by their office, information to assist victims of domestic violence with domestic violence law, the dynamics of victimization, and resources available to victims of domestic violence. At a minimum, the internet website shall include:

a) An explanation of what constitutes domestic violence under California law, including how domestic violence is defined in statute;

b) Information regarding domestic violence shelter services available by county, which may include a map feature that does not include any confidential locations;

c) The statute of limitations applicable to domestic violence crimes;

d) Information about how to file a criminal complaint;

e) A summary of state mandatory arrest policies for domestic violence crimes, as specified, and how they are modified by the dominant aggressor concept;

f) The availability of domestic violence restraining and protective orders and information about how to obtain them;

g) The impact of domestic violence on child custody and spousal support in civil court;

h) Consequences of domestic violence and stalking-related restraining and protective orders and convictions in terms of the perpetrator's ability to own and possess firearms;

i) The availability of federal U visas, their effect, and procedures to obtain them;

j) The impact of domestic violence on children who witness it;

k) Contact information for additional assistance, including, but not limited to, the National Domestic Violence Hotline and internet website;

l) Resources available to domestic violence victims who are part of the gay, lesbian, bisexual, and transgender community;

m) Dynamics of domestic violence;

n) A summary of possible civil remedies available in domestic violence-related cases, including the applicable statutes of limitation;

o) Services available to Native American victims of domestic violence occurring on tribal lands or a link to where this information may be found;

p) A summary of the Safe at Home Program; and

q) Any additional information that the office determines would help victims of domestic violence understand their rights, available services, and applicable laws and legal procedures.

6) Allows CalOES to also include on the website, in addition to textual information required, embedded video features that discuss the information described above, including advice on how to safely escape a violent relationship, survivors' stories, or a combination of those

topics.

7) Requires the information provided to be in plain language, be culturally competent, and be searchable. The information shall be translated into languages in addition to English, including a minimum of the five most commonly spoken languages in California. If any embedded videos are included in the internet website, they shall also be available in not less than five languages or in English with subtitles available in each of those languages.

8) Allows CalOES to consult with stakeholders, including representatives of organizations that support crime victims, experts in the dynamics of domestic violence, experts in domestic violence law, district attorneys, shelter service providers, and law enforcement agencies in developing the information to be provided.

9) Requires CalOES to ensure that the information on the website is accurate and updated not less than once per year. With regard to the information regarding domestic violence shelter services, the CalOES may rely on information provided to it by the shelter provider at least once annually and is not required to independently verify all of the information provided.

10) Requires CalOES to encourage district attorneys' offices, county social service agencies, and state and local law enforcement agencies to provide links to the website on their websites.

11) States this act shall be known and may be cited as the Access to Domestic Violence Information for Survivor Empowerment (ADVISE) Act.

12) Delays operation of these provisions until January 1, 2025.

EXISTING LAW:

1) Requires peace officers to take a course of training in the handling of domestic violence complaints, as specified. (Pen. Code, § 13519.)

2) Provides that whenever there is an alleged violation of specified domestic violence or sexual assault, the law enforcement officer assigned to the case shall immediately provide the victim with a "Victims of Domestic Violence" card or sexual assault card, whichever is applicable. (Pen. Code, §§ 264.2, subd. (a); 13701, subd. (c)(9)(H).)

3) Requires law enforcement agencies to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls, including furnishing written notice to victims at the scene, including but not limited to specified information. This includes furnishing a Victims of Domestic Violence card to victims at the scene of an alleged violation of specified domestic violence or sexual assault. (Pen. Code, § 13701, subd. (a).)

4) Requires the domestic violence card to include a variety of information regarding the names and phone numbers of domestic violence shelters and rape victim counseling centers within the county, and their 24-hour counseling service telephone numbers; a statement on the procedures for a victim to follow after a sexual assault; a statement that a domestic violence or assault by a person who is known to the victim, including by a person who is the spouse of the victim, is a crime. (Pen. Code, § 13701, subd. (c)(9)(H).)

5) Provides that, except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused. (Gov. Code, § 820.2.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In California there is no centralized location for survivors of domestic violence to find resources and gain an understanding of services that are available to them. California has a plethora of resources and has been at the forefront of creating programs to help survivors. Unfortunately, survivors can have a hard time accessing these programs and their services. A one-stop hub for these resources will assist survivors with information and assistance on seeking appropriate services for their circumstances and when to connect with law enforcement. This website will be most useful to individuals who are not yet ready to reach out to law enforcement or a victim's helpline, but who want to know what services are available. AB 330 will require the Office of Emergency Services (OES) to host and update a website with resources and key information for survivors of domestic violence. The website will not only include key information about current laws that are applicable but also services that are available to survivors of domestic violence both at the state and local levels. These resources include, but are not limited to: emergency shelters, access to medical care, 24/7 victim's helpline and victim's rights."

2) **Domestic Violence Victim Resources**: There are a variety of state and national services that are available to support victims of domestic violence. Contact information is collected for those resources in several places. For example, the California Victim Compensation Board (CalVCB) provides the phone number for the national hotline for domestic violence and other services. (https://victims.ca.gov/?s=domestic+violence .) The website for the California Partnership to End Domestic Violence has additional resources. (https://www.cpedv.org/national-and-state-links.) Still others can be found at the National Domestic Hotline website. (https://www.thehotline.org/resources/.) In addition, the McGeorge School of Law has an informational website that includes a searchable database of available resources in a particular zip code or county. (https://1800victims.org/resources.) Most of these resources are in English, and some have the option to display in Spanish.

   The purpose of this bill is to help ensure that domestic violence victims are aware of their rights and resources and how they can access them. Current law requires the provision of written notice to domestic violence victims. This bill would update and expand that notice by requiring it to be printed in languages other than English and include information such as the definition of domestic violence and the statute of limitations for domestic violence offenses. In addition, the bill would require law enforcement basic training to include the furnishing of domestic violence victim cards. It would also require CalOES to create a website with victim resources and a model domestic violence card that can be adopted and modified by local law enforcement agencies.

3) **Law Enforcement Training on Domestic Violence**: Penal Code section 13519 requires peace officers to receive training on the handling of domestic violence complaints as part of basic training. Additionally, law enforcement officers below supervisory rank assigned to patrol are required to take refresher training every two years. (Pen. Code, § 13519, subd. (g).)

   The course of training covers the following procedures and techniques:

   - The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.
   - The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.
   - Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.
   - The nature and extent of domestic violence.
   - The signs of domestic violence.
   - Criminal conduct that may be related to domestic violence.
   - The assessment of lethality or signs of lethal violence in domestic violence situations.
   - The legal rights of, and remedies available to, victims of domestic violence.
   - The use of an arrest by a private person in a domestic violence situation.
   - Documentation, report writing, and evidence collection.
   - Domestic violence diversion
   - Tenancy issues and domestic violence.
   - The impact on children of law enforcement intervention in domestic violence.
   - The services and facilities available to victims and batterers.
   - The use and applications of the Penal Code in domestic violence situations.
   - Verification and enforcement of temporary restraining orders when the suspect is present and when the suspect has fled.
   - Verification and enforcement of stay-away orders.
   - Cite and release policies.
   - Emergency assistance to victims and how to assist victims in pursuing criminal justice options. (Pen. Code, § 13519, subd. (c).)

   This bill would specify an additional training requirement. In particular, this bill would require that the issuance of victims of domestic violence cards be included in the training.

4) **Argument in Support**: According to the *California District Attorneys Association*, "AB 330 will help victims of domestic violence by providing an important resource for services and information available to them. This bill also centralizes much needed information by creating a website about educational resources to help victims better understand their rights. It will additionally include readily available local and statewide services for immediate assistance."

5) **Argument in Opposition**: None

6) **Prior Legislation**:

a) AB 2833 (Lackey), of the 2019-2020 Legislative Session, was substantially similar to this bill. AB 2833 was held in the Assembly Appropriations Committee.

b) SB 273 (Rubio), Chapter 546, Statutes of 2019, extended the statute of limitation for the crime of domestic violence to five years, and made changes to domestic violence training requirements for peace officers.

c) SB 40 (Roth), Chapter 331, Statutes of 2017, required written notice to be furnished to victims at the scene of a domestic violence incident informing the victim that strangulation may cause internal injuries and encouraging the victim to seek medical attention.

d) AB 1201 (Murray), Chapter 698, Statutes of 1998, expanded the group of victims entitled to receive the domestic violence card to include victims of a dating relationship battery or corporal injury on a spouse. Required specified information on the card.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

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

Date of Hearing: March 7, 2023
Counsel: Liah Burnley

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

AB 335 (Alanis) – As Introduced January 30, 2023

As Proposed to be Amended In Committee

SUMMARY: Requires the Little Hoover Commission (commission) to submit a report to the Legislature on retail theft, shoplifting, and organized retail theft in California. Specifically, **this bill**:

1) States that the report shall include all of the following:

   a) Information on retail thefts, shoplifting, and organized retail thefts reported to all state and local law enforcement agencies, including but not limited to:

      i) The number of reports made to each law enforcement agency;

      ii) The size of the business, if known;

      iii) The type of property reported stolen, if known; and,

      iv) The monetary value of the property reported stolen, if known.

   b) Information on every state and local law enforcement agencies' response to each report of retail theft, shoplifting, and organized retail theft, including but not limited to:

      i) The average amount of time taken by the law enforcement agency to respond to the report;

      ii) Whether the reported theft was investigated by law enforcement;

      iii) Whether an arrest was made in response to each report;

      iv) Whether a citation was made in response to each report, and if so which; and,

      v) Whether the investigating law enforcement referred the matter to the district attorney for prosecution.

   c) Information on actions of district attorneys who received reports of retail thefts, shoplifting, and organized retail thefts from law enforcement agencies including:

      i) Whether they filed criminal charges in each case; and

ii) If charges were not filed, the extent to which this was due to the district attorney's determination that there was insufficient evidence to prosecute the offense, policies relating to the prioritization of filing charges in these types of cases, or due to some other reason.

d) Countywide statistical information on theft, shoplifting, and organized retail theft, including but not limited to:

i) The number of reports made to law enforcement in each county;

ii) The number of arrests made in each county;

iii) The number of citations given in each county;

iv) The number of cases referred to the district attorney for prosecution of theft, shoplifting, and organized retail theft in each county; and,

v) The disposition of each case referred to the district attorney for prosecution in each county.

2) Requires the commission to include any findings and recommendations relating to laws, policies, and practices regarding retail theft, shoplifting, and organized retail theft in California in the report.

3) Requires state and local law enforcement agencies to collect and share the required information with the commission for the purpose of the report.

4) Requires the commission shall provide the report to the Legislature no later than January 1, 2026.

5) Sunsets these provisions on January 1, 2027.

EXISTING LAW:

1) Establishes the commission and provides that the commission shall be composed of thirteen members as specified. (Gov. Code, § 8501.)

2) Provides that it is the purpose of the commission, to secure assistance for the Governor and the Legislature in promoting economy, efficiency, and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives. (Gov. Code, § 8521.)

3) Defines "shoplifting" as entering a commercial establishment with intent to commit theft, while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950. Shoplifting shall be punished as a misdemeanor, except that shoplifting may be punished as a felony if a person

has a prior "super strike," or a registerable sex conviction, as specified. (Pen. Code § 459.5 subd. (a).)

4) Specifies that any other entry into a commercial establishment with intent to commit theft is burglary. Burglary in the first degree is a felony; burglary in the second degree is a wobbler (an alternate felony/misdemeanor). (Pen. Code §§ 459.5 subd. (a) & 461.)

5) Defines "Grand theft" as theft that is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except as specified. Grand theft is a wobbler (an alternate felony or misdemeanor). (Pen. Code, §§ 487 & 489, subd. (c).)

6) Defines "Petty theft" as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950. Petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 6 months, or both. Petty theft does not include any theft that may be charged as an infraction. (Pen. Code, §§ 490 & 490.2.)

7) Provides that the offense of petty theft with a prior is a wobbler. (Pen. Code, § 666, subd. (a).)

8) Defines "organized retail theft" as any person who acts in concert with other persons to steal merchandise from a merchant with the intent to sell, exchange, or return the merchandise for value; to receive, purchase or possess merchandise knowing or believing it to have been stolen; or, as a part of an organized plan to commit theft. Organized retail theft is punishable as a wobbler. (Pen. Code, § 490.4.)

9) States that the authority of peace officers extends to any place in the state as to a public offense committed, for which there is probable cause to believe has been committed, as specified. (Pen. Code, § 830, et seq.)

10) Authorizes peace officers to make an arrest for the commission of a felony or a misdemeanor. (Pen. Code, §§ 840, 834 et seq.)

11) Permits a peace officer to take a person into custody rather than releasing them on their own recognizance if, among other reasons, a person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months, or when there is probable cause to believe that the person arrested is guilty of committing organized retail theft. (Pen. Code, § 853.6.)

12) Allows a bench warrant to be issued where the person has been cited or arrested for misdemeanor or felony theft from a store and has failed to appear in court in connection with that charge or those charges in the previous six months. (Pen. Code, § 978.5.)

13) Authorizes a city or county prosecuting attorney or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses. (Pen. Code, § 1001.81.)

14) Requires the Department of the California Highway Patrol (CHP) to coordinate with the Department of Justice (DOJ) to convene a regional property crimes task force to identify

geographic areas experiencing increased levels of property crimes, including organized retail theft, and assist local law enforcement with resources, such as personnel and equipment. (Pen. Code, § 13899.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California businesses have faced unintended adverse impacts under Proposition 47. There is very little aggregated information available as to the full extent of those impacts. Business owners, including minority businesses owners, expect the laws to work for them in protecting their person, property and way of life. Failure to deliver on those expectations erodes the trust they have for their government and in law enforcement. AB 335 will provide clarity, on the impacts to businesses, including small businesses, and give us as lawmakers an opportunity to fairly and openly address potential deficits in the enactment of Proposition 47."

2) **Reforms Made by Proposition 47**: In the November 4, 2014 election, California voters approved Proposition 47, with 59.6% of the vote, which became effective the following day. (California Secretary of State ("SOS"), *Statement of the Vote* at p. 93 <https://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Feb. 16, 2023].) The purpose of Proposition 47 is to "ensure that spending focused on violent and serious offences and to maximize alternatives for nonserious, nonviolent crime" and to invest the savings into "prevention and support programs for schools, victims services, and mental health and drug treatment." (SOS, *Voter Guide, Proposition 47, Section 2* at p. 70 <https://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf> [as of Feb. 16, 2023].)

   Proposition 47 amended various provisions of the Government Code, Penal Code and Health and Safety Code to reclassify certain drug possession offenses and property offenses less than $950 from felonies or wobblers to misdemeanors, and created the misdemeanor offense of shoplifting. However, the measure limited these reduced penalties to offenders who do not have designated prior convictions for specified serious or violent felonies (super strikes) and who are not required to register as sex offenders. (*Ibid.*)

3) **Proposition 47 and Crime Rates**: Opponents of Proposition 47 claim that there is an increase in crime attributable to the initiative. However, reports evaluating the effects of the initiative have found that Proposition 47 has had little to no effect on California's crime rates overall. (KQED, *California Prison Reform Didn't Cause Crime Increase, Study Finds* <https://www.kpcc.org/2016-02-18/study-cas-prison-reform-didnt-cause-crime-increase>[as of Feb. 16, 2023]; see also, Center on Juvenile and Criminal Justice, *Urban Crime Trends Remain Stable Through California's Policy Reform Era (2010-2016)* <http://www.cjcj.org/uploads/cjcj/documents/urban_crime_trends_remain_stable_through_californias_policy_reform_era_2010-2016.pdf> [as of Feb. 16, 2023].) Incarceration and crime rates are all down substantially compared to their levels in 2006 – shortly before state policymakers and the voters began enacting reforms to California's criminal justice system. (*Criminal Justice Reform is Working in California*, California Budget & Policy Center <https://calbudgetcenter.org/resources/criminal-justice-reform-is-working-in-california/> [as

of Feb. 16, 2023].)

In 2020, the property crime rate in California reached the lowest level observed since 1960. While it ticked up in 2021 by 2.4%, it remained low. Property crime rose in 25 counties in 2021—San Francisco saw the largest increase, by 16.9%. On the other hand, property crime fell in 8 of the 15 largest counties, with Ventura's 6.3% drop being the largest. (PPIC, *Crime Trends in California* <https://www.ppic.org/publication/crime-trends-in-california/> [as of March 2, 2023].)

Moreover, a study by the Pew Research Center found that raising the felony theft threshold in other states had no impact on crime; states that increased their thresholds reported roughly the same average decrease in crime as the 20 states that did not change their theft laws; and the amount of a state's felony theft threshold—whether it is $500, $1,000, $2,000, or more—is not correlated with its property crime and larceny rates. (Pew Research Center, *The Effects of Changing Felony Theft Thresholds* <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-effects-of-changing-felony-theft-thresholds> [as of Feb. 16, 2023].)

Research also suggests that Proposition 47 has had no effect on violent crimes, including homicide, rape, aggravated assault and robbery and findings of increased property offenses such as larceny and motor vehicle theft that blame Proposition 47 as the cause do not withstand more rigorous statistical testing. (Bartos, Bradley J. & Kubrin, Charis E., *Can We Downsize Our Prisons and Jails without Compromising Public Safety?* (2018) 17 Criminology & Public Policy 3 <https://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12378 > [as of Feb. 16, 2023].)

4) **Reports of Exaggerated Losses by Retailers**: Some complaints of retail theft were overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html> [as of March 2, 2023]; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate> [as of March 2, 2023]; CNN Business, '*Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html> [as of March 2, 2023]; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/> [as of March 2, 2023].)

5) **Recent Legislation Targeting Reports of Increased Theft**: The crime of organized retail theft was created by AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018. AB 1065 also authorized CHP to establish regional task forces to investigate property theft crimes. AB 1065 contained various provisions expanding jurisdiction to prosecute theft, organized retail

theft and receipt of stolen property; authorizing nonrelease of individuals arrested for misdemeanors when certain circumstances are present; specifying that a court may issue a bench warrant for a person who failed to appear if the defendant has been cited or arrested for a theft offense in the previous 6 months; and authorizing the creation of a diversion or deferred entry of judgment program for persons who commit theft and repeat theft offenses. AB 1065 contained a sunset date of January 1, 2021.

Subsequently, AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, reenacted the provisions of the original bill that created the crime of organized retain theft. AB 331 contains a sunset date of January 1, 2026. AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and provisions of AB 1065 that had authorized nonrelease of individuals arrested for misdemeanors when certain circumstances are present; specifying that a court may issue a bench warrant for a person who failed to appear if the defendant has been cited or arrested for a theft offense in the previous 6 months; and authorizing the creation of a diversion or deferred entry of judgment program for persons who commit repeat theft offenses but also expanded to apply to single theft offenses. AB 2294 contains a sunset date of January 1, 2026.

In addition, AB 2356 (Rodriguez), Chapter 22, Statues of 2022, specified that if the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, whether committed against one or more victims, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. According to the Assembly Public Safety Analysis of AB 2356, the intent of the bill was to "codify existing case law, *People v. Bailey* (1961) 55 Cal.2d 514, 518-519 to "clarify the state of the law to the extent some prosecutors may think Proposition 47 changed the *Bailey* rule."

6) **Need for this Bill**: In the post-Proposition 47 debate, law enforcement officers say they no longer can arrest people for thefts and prosecutors claim they cannot prosecute the offenses. And, because arrests are down, they contend that crime in California is increasing, resulting in increases in thefts and property offenses. (Los Angeles Times, *Opinion: California's Prop. 47 Revolution: Why Are Police Refusing To Make Misdemeanor Arrests?* <https://www.latimes.com/opinion/opinion-la/la-ol-proposition-47-falsehoods-arrest-20151027-story.html> [as of March 2, 2023].)

Supporters of Proposition 47 respond that crime rates fluctuate for a number of factors, and that rising crime in cities outside California shows that there is not necessarily a causal link between crime and Proposition 47. Further, all the same procedures and remedies that were available before the proposition took effect are still available, except that jail sentences for those specified crimes may be reduced in certain circumstances. (*Ibid*)

Given that critics of the initiative believe that crime is rising because law enforcement will not make arrests and people will not be prosecuted for their offenses, it is important for the Legislature to understand to what extent law enforcement and prosecutors are failing to respond to reports of thefts. To shed light on this issue, this bill would require the commission to submit a report to the Legislature on retail theft, shoplifting, and organized retail theft in California, including specific metrics about the number of reports of thefts

made, and the response made by every state and law enforcement agency and prosecutors to each reported theft.

7) **Argument in Support**: According to the *Modesto Chamber of Commerce*, "Since the approval of Prop 47, crime has significantly increased, especially theft and shoplifting, which has dramatically impacted our residents and business community. We have heard from our small business community their frustration with shoplifters. Many of these businesses have stopped reporting theft entirely. Due to staffing shortages and difficulty recruiting, law enforcement agencies have struggled to respond to every reported crime, Proposition 47 has just made that worse. Shoplifting is not a victimless crime, nor insignificant. Business owners and residents should be able to count on the law working for them, and law enforcement agencies should be provided the tools they need to ensure victims are provided justice."

8) **Argument in Opposition**: According to *Californians for Safety and Justice*, "Prop. 47 did not affect serious or violent felonies, but instead targeted low-level property and drug offenses for reform. Political rhetoric notwithstanding, since its enactment, property crime has decreased in California. Not dissuaded, in 2020, "tough on crime" advocates tried to persuade the public to repeal Prop. 47 via Prop. 20. Again, California voters rejected the attempt to go back to mass incarceration."

9) **Related Legislation**:

   a) AB 23 (Muratsuchi), would amend Proposition 47 by reducing the threshold amount for petty theft and shoplifting from $950 to $400. AB 23 has been permanently pulled by the author. .

   b) AB 75 (Hoover), would reinstate a provision of law that was repealed by Proposition 47 relating to petty theft with a prior. AB 75 failed passage in this Committee.

   c) AB 329 (Ta), would amend Proposition 47 to make petty theft or shoplifting by a person who is not a resident of this state a wobbler. AB 329 is pending hearing in this Committee.

   d) SB 316 (Niello), would reinstate a provision of law that was repealed by Proposition 47 relating to petty theft with a prior. SB 316 is pending in Senate Public Safety Committee.

10) **Prior Legislation**:

   a) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified.

   b) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

   c) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

d) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced penalties for certain drug and property crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Modesto Chamber of Commerce
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Take a Stand Stanislaus
Turlock Associated Police Officers
Upland Police Officers Association

7 Private Individuals

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Defy Ventures
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Last Prisoner Project
Miracles Counseling Center
Rubicon Programs
Santa Cruz Barrios Unidos INC.

Universidad Popular

2 Private Individuals

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

Amended Mock-up for 2023-2024 AB-335 (Alanis (A))

Mock-up based on Version Number 99 - Introduced 1/30/23
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 490.8 is added to the Penal Code, to read:

490.8. (a) The Milton Marks "Little Hoover" Commission on California State Government Organization and Economy (commission), established pursuant to Section 8501 of the Government Code, shall submit a report to the Legislature on retail theft, shoplifting, and organized retail theft in California. The report shall include, at a minimum:

(1) Information on retail thefts, shoplifting, and organized retail thefts reported to all state and local law enforcement agencies, including but not limited to, the number of reported retail thefts, shoplifting, and organized retail thefts made to each law enforcement agency, the size of the business if known, the type of property reported stolen if known, and monetary value of the property reported stolen, if known.

(2) Information on every state and local law enforcement agencies' response to each report of retail theft, shoplifting, and organized retail theft, including but not limited to, the average amount of time taken by the law enforcement agency to respond to the reported theft, whether the reported theft was investigated by law enforcement, whether an arrest was made in response to each report, whether a citation was made in response to each report, and if so which, and whether the investigating law enforcement referred the theft, retail theft, shoplifting, and organized retail theft to the district attorney for prosecution.

(3) Information on whether the district attorney who received reports of retail thefts, shoplifting, and organized retail thefts from law enforcement agencies filed criminal charges in each case, and, if charges were not filed, the extent to which this was due to the district attorney's determination that there was insufficient evidence to prosecute the offense, due to policies relating to the prioritization of filing charges in these types of cases or due to some other reason for declining to file criminal charges in these cases.

(4) Countywide statistical information, including but not limited to: the amount of reports of theft, shoplifting, and organized retail theft made to law enforcement in each county and the corresponding response, the amount of arrests made for theft, shoplifting, and organized retail theft in each county, the number of citations given for theft, shoplifting, and organized

retail theft in each county, the number of cases referred to the district attorney for prosecution for theft, shoplifting, and organized retail theft in each county, and the disposition of each case referred to the district attorney for prosecution in each county.

(c) The commission shall include any findings and recommendations relating to laws, policies, and practices regarding retail theft, shoplifting, and organized retail theft in California in the report.

(d) State and local law enforcement agencies shall collect and share the required information with the commission for the purpose of the report.

(e) The commission shall provide the report to the Legislature no later than January 1, 2026. The report shall be submitted in compliance with Section 9795 of the Government Code.

(f) This section shall remain in effect until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

~~**SECTION 1.** Chapter 33 (commencing with Section 7599) of Division 7 of Title 1 of the Government Code is repealed.~~

~~**SEC. 2.** Section 11350 of the Health and Safety Code is amended to read:~~

~~**11350.** (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(b) Except as otherwise provided in this division, every person who possesses any controlled substance specified in subdivision (c) of Section 11054 shall be punished by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

~~(c) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a) or (b), the judge may, in addition to any punishment provided for pursuant to subdivision (a), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of their inability to pay the fine permitted under this subdivision.~~

(d) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

(e) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(f) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

SEC. 3. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

~~(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.~~

~~(3) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (7) or (8) of subdivision (d) of Section 11055 is guilty of a misdemeanor.~~

~~(4) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in paragraph (8) of subdivision (f) of Section 11057 is guilty of a misdemeanor.~~

~~(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of their inability to pay the fine permitted under this subdivision.~~

~~(d) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:~~

~~(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.~~

~~(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.~~

~~(e) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.~~

~~**SEC. 4.** Section 459.5 of the Penal Code is repealed.~~

~~**SEC. 5.** Section 473 of the Penal Code is amended to read:~~

~~**473.** Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.~~

~~**SEC. 6.** Section 476a of the Penal Code is amended to read:~~

~~**476a.** (a) Any person who, for themselves, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depositary, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depositary, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express~~

~~representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.~~

~~(b) However, if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed four hundred fifty dollars ($450), the offense is punishable only by imprisonment in the county jail for not more than one year. This subdivision shall not be applicable if the defendant has previously been convicted of a violation of Section 470, 475, or 476, or of this section, or of the crime of petty theft in a case in which defendant's offense was a violation also of Section 470, 475, or 476 or of this section or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Section 470, 475 or 476 or of this section or if the defendant has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476, or of this section.~~

~~(c) Where the check, draft, or order is protested on the ground of insufficiency of funds or credit, the notice of protest shall be admissible as proof of presentation, nonpayment, and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with the bank or depositary, person, firm, or corporation.~~

~~(d) In any prosecution under this section involving two or more checks, drafts, or orders, it shall constitute prima facie evidence of the identity of the drawer of a check, draft, or order if both of the following occur:~~

~~(1) When the payee accepts the check, draft, or order from the drawer, the payee obtains from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. That information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means.~~

~~(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.~~

~~(e) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depositary, person, firm, or corporation for the payment of a check, draft, or order.~~

~~(f) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.~~

~~(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.~~

(h) The amount of the fee shall not exceed twenty-five dollars ($25) for each bad check, in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects a fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to this section exceed ten dollars ($10) per check.

SEC. 7. Section 490.2 of the Penal Code is repealed.

SEC. 8. Section 496 of the Penal Code is amended to read:

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars ($950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of nine hundred fifty dollars ($950) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of nine hundred fifty dollars ($950) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

(c) Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

(d) Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

SEC. 9. Section 666 of the Penal Code is amended to read:

666. (a) Notwithstanding Section 490, every person who, having been convicted three or more times of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496 and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in a county jail not exceeding one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(b) Notwithstanding Section 490, any person described in paragraph (1) who, having been convicted of petty theft, grand theft, a conviction pursuant to subdivision (d) or (e) of Section 368, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, and who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.

(1) This subdivision shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(2) This subdivision shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.

SEC. 10. Section 1170.18 of the Penal Code is repealed.

SEC. 11. Sections 1 to 10, inclusive, of this act amend the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide election, and shall become effective only when submitted to and approved by the voters. The Secretary of State shall submit Sections 1 to 10, inclusive, of this act for approval by the voters at a statewide election in accordance with Section 9040 of the Elections Code.

Date of Hearing: March 7, 2023
Counsel: Liah Burnley

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

AB 353 (Jones-Sawyer) – As Introduced January 31, 2023

SUMMARY: Requires incarcerated persons to be permitted to shower at least every other day. Specifically, **this bill**:

1) Requires the California Department of Corrections and Rehabilitation (CDCR) to permit incarcerated persons to shower at least every other day, unless access to a shower is prohibited.

2) Provides that whenever a request for a shower is prohibited or denied, the facility manager or their designee shall approve the decision, and the reasons shall be documented.

EXISTING STATE LAW:

1) Prohibits cruel and unusual punishment. (Cal. Const., art. I, § 17.)

2) States that a person sentenced to imprisonment in a state prison may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600, subd. (a).)

3) Provides that it shall be unlawful to use in the prisons, any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate or person confined. (Pen. Code, § 2652.)

4) Requires CDCR to provide each prisoner with a bed, sufficient covering of blankets, and with garments of substantial material and of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health and that shall include the availability of plant-based meals. (Pen. Code, § 2084, subd. (a).)

5) Allows CDCR wardens to make temporary rules and regulations, in case of emergency, to remain in force until CDCR otherwise provides. (Pen. Code, § 2086.)

EXISTING FEDERAL LAW: Prohibits cruel and unusual punishment. (U.S. Const., 8th Amend.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "All human beings have a right to ensure good hygiene, regardless of their status in society. It is immoral, inhumane, and cruel to

deprive someone of their right to shower. In spite of this, reports from persons housed at CDCR prisons shine a light on the abuses that are being committed against them. AB 353 seeks to rectify one of those by spelling out in law an incarcerated person's right to shower and uphold proper hygiene. Specifically, this bill guarantees that persons incarcerated at CDCR have access to showers, at least every other day, regardless of whether or not they have an employment position while incarcerated."

2) **Constitutional Prohibition against Cruel and Unusual Punishment**: The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners from inhumane conditions of confinement. (*Farmer v. Brennan* (1994) 511 U.S. 825, 832.) Prison officials therefore have a "duty to ensure that prisoners are provided with adequate shelter, food, clothing, sanitation, medical care, and personal safety." (*Johnson v. Lewis* (9th Cir. 2000) 217 F.3d 726, 731.)

   Although routine discomforts in prison are inadequate to show a violation of the Eighth Amendment, "those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." (*Hudson v. McMillian* (1992) 503 U.S. 1, 9.) "The circumstances, nature, and duration of a deprivation of these necessities must be considered in determining whether a constitutional violation has occurred." (*Johnson v. Lewis*, *supra*, 217 F.3d at p. 731.)

   Accordingly, "there is no constitutional right to a certain number of showers per week and an occasional or temporary deprivation of a shower does not rise to the level of a constitutional violation." (*Ontiveros v. Eldridge* (E.D. Cal. Apr. 13, 2020) WL 1853003, at *2.) But, "the denial of a shower on a continuous basis at some point will rise to the level of violating the Eighth Amendment." (*Pamer v. Schwarzenegger* (E.D.Cal. Dec. 22, 2010) U.S.Dist.LEXIS 135824, at *14.) "A prison official's failure to provide a prisoner with a shower or out-of-cell exercise for this extended period of time is sufficiently serious" to satisfy an Eighth Amendment claim. (*Ekene v. Cash* (C.D.Cal. Jan. 8, 2013) U.S.Dist.LEXIS 81952, at *20); see also *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083, 1091 [Eighth Amendment guarantees sanitation and personal hygiene].)

3) **CDCR Regulations on Personal Hygiene:** Title 15 regulations require CDCR institutions to "provide the means for all inmates to keep themselves and their living quarters clean and to practice good health habits." (Cal. Code Regs., tit. 15, § 3060.) The regulations further provide that incarcerated persons "must keep themselves clean, and practice those health habits essential to the maintenance of physical and mental well-being." (Cal. Code Regs., tit. 15, § 3061.) "All inmates shall receive basic supplies necessary for maintaining personal hygiene. Inmates shall be provided products for washing hands, bathing, oral hygiene, and other personal hygiene, including but not limited to: soap, toothpaste or toothpowder, toothbrush, and toilet paper." (*Ibid.*)

   CDCR's Department Operational Manual (DOM) requires incarcerated persons in segregated confinement to be permitted to shower at least three times a week. (DOM §§ 52080.21.6 & 52080.33.6.) There are no further rules regarding access to showers. However, the DOM allows staff to report on an incarcerated person's personal cleanliness. (DOM § 72010.7.1.)

   In comparison, the regulations require local correctional facilities to permit incarcerated persons to "shower/bathe upon assignment to a housing unit and at least every other day or

more often if possible. Absent exigent circumstances, no person shall be prohibited from showering at least every other day following assignment to a housing unit. If showering is prohibited, it must be approved by the facility manager or designee, and the reason(s) for prohibition shall be documented." (Cal. Code. Regs., tit. 15, § 1266.)

As is required of local correctional facilities, this bill would ensure that persons incarcerated at CDCR institutions are allowed to shower at least every other day. CDCR would retain discretion to set the length and shower schedule and can deny or prohibit showers, if the reasons are documented and the denial is approved by the facility manager.

4) **Shower Restrictions for Water Efficiency and Conservation**: To combat California's severe drought, CDCR "implemented a combination of water conservation and water efficiency projects." Water conservation efforts have included changes to operational procedures to reduce water consumption as required through CDCR's implementation of Drought Action Plans. (CDCR, *Water Efficiency & Conservation* <https://www.cdcr.ca.gov/green/cdcr-green/water-efficiency-and-conservation/> [as of Feb. 22, 2023].)

"CDCR developed a statewide Drought Action Plan and required each institution to develop a site specific plan." (CDCR, *Sustainability Roadmap 2020-2021 California Department of Corrections and Rehabilitation* at p. 82 <https://www.cdcr.ca.gov/green/wp-content/uploads/sites/176/2020/04/R_2020-21-CDCR-Sustainability-Roadmap-FINAL-Electronic-Signature.pdf> [as of Feb. 22, 2023].) Concerning showers, the Drought Action Plan mandates statewide that "inmate/ward shower duration shall not exceed 5 minutes," requires institutions to "update and enforce existing shower schedules," and to "shutdown and cease all inmate/ward showers that are not conducted inside each housing unit (i.e. yard showers, etc.)" (*Id.* at p. 83.) Other site-based measures include "inmate/ward workers assigned to culinary, construction/maintenance duties, and/or programs requiring showering shall be allowed to shower once daily not to exceed 5 minutes. All other inmates/wards will be permitted showers three times a week not to exceed 5 minutes." (*Ibid.*)

5) **Impact of Shower Restrictions on Incarcerated Persons**: Incarcerated persons have reported that they are "unable to shower daily, despite the fact that outbreaks of diseases such as COVID-19 and norovirus and infestations of bedbugs and scabies are common." (Cal Matters, *Tying Water Access to Labor in Overcrowded Prisons is Wrong* (June 2022) <https://calmatters.org/commentary/2022/06/tying-water-access-to-labor-in-overcrowded-prisons-is-wrong/> [as of Feb. 22, 2023].) "Prisoners who don't have jobs — including those pursuing GEDs or college degrees — are allowed a five-minute shower on Tuesdays, Thursdays and Saturdays. To shower every day, you have to work to help maintain the prison or its industries. Yet every day, most prisoners run up and down basketball courts, jog around the track, slide into home plate, or participate in other activities in the prison yard." (*Ibid.*) "Hundreds of men, soaked in sweat, return to their cramped cells and cannot shower. If we shower or even "bird bath" without permission, we can lose privileges, see our prison stay extended or have parole denied." (*Ibid.*)

Many incarcerated people spend most of their time in "double occupancy—11-foot-by-four-foot cells that leave only three feet between each incarcerated person's two-and-a-half-foot-wide bunk bed and shared sink and toilet, with limitations on flushing." (The Nation, *Prisoners Forced to Work for Showers Are Now Being Punished for Taking Them* (2022)

<https://www.thenation.com/article/society/water-restrictions-drought-california-prisons/> [as of Feb. 22, 2023].) Amid a pandemic, heat, and limited access to showers, some incarcerated individuals have received rule violations for taking showers outside of allotted days and times. (*Ibid.*) The lack of an opportunity to have a regular shower or otherwise maintain personal hygiene may be psychologically and physically degrading and humiliating.

Not only does providing regular showers ensure the hygiene and dignity of people in detention, but it also helps avoid the transmission of certain infectious diseases. Among other things, the probability of transmission of potentially pathogenic organisms is increased by prison crowding and rationed access to soap, water, and clean laundry. For example, ectoparasites, such as scabies and lice, are common problems in correctional facilities. Appropriate management of suspected cases includes shower access. MRSA is hyperendemic in most correctional facilities, and risk factors include prolonged incarceration. Liberalizing access to soap, showers, and clean clothing may lead to less opportunity for secondary transmission. (Bick, Joseph, *Infection Control in Jails and Prisons* (2007) 45 *Clinical Infectious Diseases* 8, 1047-55.) Ensuring incarcerated persons have access to shower regularly plays a significant role in public health, infection control and preventing the spread of communicable disease.

6) **Argument in Support**: According to *Initiate Justice*, "Although regulations ensure the hygiene practices of incarcerated persons, those detained at the California Department of Corrections and Rehabilitation (CDCR) facilities have reported limited access to showers, a basic human right. If a person misses a shower for any reason, they are not allowed another opportunity to clean themselves. Incarcerated people have reportedly missed their chance to shower due to participation in other programming, medical appointments, or even "recreation" time. As a result, incarcerated individuals can go up to a week without taking a shower, essentially forced to sit in the stench of their body odor and musty clothes. This is not only inhumane but also very unsanitary and detrimental to each individual's physical and mental health. Regardless of where individuals find themselves in life, human beings should not be denied the opportunity to shower.

"AB 353 (Jones-Sawyer) would improve these inhumane practices by ensuring that those incarcerated in CDCR facilities have access to a shower, no less than every other day, regardless of job placement, education or other assignments that would cause an individual to miss their shower time as governed by the correctional officers."

7) **Related Legislation**: AB 280 (Holden) would require all detention facilities to impose no limitation on services, treatment, or basic needs such as bedding, clothing and food for individuals in segregated confinement. AB 280 is pending hearing in this Committee.

8) **Prior Legislation**:

   a) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, limits the use of juvenile room confinement and ensures that minors and wards confined at juvenile facilities are provided reasonable access to toilets at all hours.

   b) AB 2632 (Holden), of the 2021-2022 Legislative Session, would have required all detention facilities to impose no limitation on services, treatment, or basic needs such as bedding, clothing and food for individuals in segregated confinement. AB 2632 was

vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
Initiate Justice

Opposition

None submitted

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

Date of Hearing: March 7, 2023
Counsel: Mureed Rasool

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

AB 355 (Alanis) – As Introduced January 31, 2023

As Proposed to be Amended in Committee

SUMMARY: Exempts persons enrolled in specified peace officer training courses from assault weapon prohibitions while they are engaged in firearms training and being supervised by a firearms instructor.

EXISTING LAW:

1) Defines an "assault weapon" by specifying certain firearms such as the Beretta AR-70, Armalite AR-180, all AK series rifles, and UZI, among others. (Pen. Code, § 30510.)

2) Defines an "assault weapon" as also including a firearm with certain characteristics such as a semiautomatic centerfire rifle with an overall length of less than 30 inches, a semiautomatic pistol with a fixed magazine that can accept more than 10 rounds, and other enumerated characteristics. (Pen. Code, § 30515.)

3) Prohibits, among other things, the giving or lending of any assault weapon, and states that a violation is a felony punishable by four, six or eight years in county jail. (Pen. Code, § 30600.)

4) Prohibits the possession of any assault weapon, except as provided, and states that a violation may be a misdemeanor punishable by up to one year in county jail, or a felony punishable by 16 months, or two, or3 years . (Pen. Code, § 30605.)

5) Provides an exception to assault weapon prohibitions for the sale, purchase, import, or possession by the Department of Justice (DOJ), police departments, sheriffs' offices, and other specified law enforcement agencies for use in the discharge of their official duties. (Pen. Code, § 30625.)

6) Provides an exception to the possession of an assault weapon for specified peace officers for law enforcement purposes, whether they are on or off duty. (Pen. Code, § 30630, subd. (a).)

7) Provides an exception to the sale or possession of an assault weapon for specified peace officers if their employer authorizes possession, as outlined. (Pen. Code, § 30630, subd. (b).)

8) Requires the Commission on Peace Officers Standards and Training (POST) to establish a certification program for peace officers. (Pen. Code, § 13510.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill 355 corrects an oversight in current law by allowing peace officer cadets enrolled in basic training prescribed by the Commission on Peace Officers Standards and Training (POST), or other certified training, to use a tactical (assault) rifle while engaged in firearms training.

   "As narrowly drafted, AB 335 does not allow cadets to use or possess an assault rifle anywhere but under the supervision of trainers during firearms training. In doing so, AB 335 will allow cadets to complete necessary training components during the academy, and avoid costly logistical and procedural issues created by current law."

2) **Assault Weapons and Peace Officers**: Under current state law, civilians are generally prohibited from possessing assault weapons unless the firearm is registered, as outlined subject to certain exceptions. (Pen. Code, § 30600 *et seq.*; Pen. Code, § 30900 *et seq.*) Peace officers working in specified law enforcement agencies are exempted from such possession prohibitions. (Pen. Code, § 30630, subd. (a).)

   According to the author of this bill, the law only makes an exception for peace officers and not cadets who are enrolled in certified peace officer training courses, creating costly logistical and procedural issues for law enforcement agencies.

   This bill would create an exemption to assault weapon prohibitions for peace officer cadets while they are engaged in firearms training and being supervised by a firearms instructor. As such, this bill would allow peace officer cadets to receive their assault weapon training without the current procedural issues they face in trying to do so.

3) **Argument in Support**: According to the bill's sponsor, the *California Police Chiefs Association*, "Penal Code Sections 30600 and 30605 make it illegal to manufacture, distribute, transport, import, or possess any assault weapon in California, and set penalties accordingly. Ensuing sections (Penal Code Sections 30625 and 30630) exempt law enforcement from these restrictions. However, the exemptions contained in those sections apply only to sworn peace officers, not cadets enrolled in POST training. This has caused logistical issues with getting cadets properly trained and certified during the academy in preparation for entry into the Field Training Program.

   "Every person designated a peace officer in California must 'satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training' (Penal Code 832). All cadets are required to obtain firearms clearance through the Department of Justice prior to enrolling in one of the POST-certified academies. Once enrolled, part of that training requires a demonstration of proficiency in the use of firearms – both handguns and tactical (assault) rifles.

   "While cadets are required to train with handguns during the POST academy, under existing law they are technically prohibited from going through that same training with tactical rifles. However, POST requires proficiency in the use of these firearms. To resolve this conflict, agencies are having to graduate cadets without completing tactical rifle training, then send them back to receive the rest of their firearms training as sworn officers. This has caused logistical and cost issues for agencies and POST, wasting resources and staff time that should

be better spent providing public safety services. At a time when agencies are all severely understaffed and public safety needs are increasing, this change would be a better use of available resources.

"AB 355 creates Penal Code Section 30631 that specifies the prohibitions against possession of an assault weapon do not apply to the loan or possession by a person enrolled in a POST academy or certified training, while engaged in firearms training. As narrowly drafted, AB 335 does not allow cadets to use or possess an assault rifle anywhere but under the supervision of trainers during firearms training. In doing so, AB 335 will allow cadets to be able to complete necessary training components during the Academy and avoid costly logistical and procedural issues created by our current statutes."

4) **Argument in Opposition**: According to the *Brady Campaign to Prevent Gun Violence*, "Assault weapons are uniquely lethal - and that's due to specific features that differentiate these weapons from hunting rifles that fire the same caliber ammunition. These features - including detachable magazines, barrel shrouds, pistol grips, forward grips, and telescoping stocks - allow a shooter to either conceal the weapon or to make it easier to fire a high volume of ammunition in a short period of time while maintaining accuracy. A typical AR-15 bullet leaves the barrel of the gun three times faster than a typical 9mm handgun bullet. When it enters a human body, the .223 caliber bullet is designed to fragment and tumble. The high velocity damages and kills tissue as the bullet travels, causing catastrophic internal bleeding. California has taken a strong position on assault weapons, and this bill aims to weaken that, allowing any person enrolled in the course of basic training prescribed by the Commission on Peace Officer Standards and Training, or any other firearms course training certified by the commission, to possess these weapons of war.

It is extremely troubling that not only are the persons allowed to possess assault weapons as trainees, but also – because of the way these training works – the trainees include people who are not working towards becoming a traditional peace officer. The trainees could include any number of people who have no need for this type of training and who have not been subject to a thorough background check or psychological examination. Permitting any person involved in this course to possess these weapons undermines the law and is dangerous. There already exists a carve out for actual peace officers, which is a properly constructed and narrow exception that makes sense.

Importantly, it is entirely unclear why this exemption is needed now. These training sessions have been carried out since this law went into effect without the participants having access to these weapons, and there is no evidence that California law enforcement is not sufficiently trained in weaponry. Placing these weapons in the hands of any person taking these courses because they may want to handle these guns is irresponsible. Californians have clearly stated their position on assault weapons, and more generally on gun violence prevention, and this would undermine the will of the people and to public health and safety. For these reasons, Brady and Brady California oppose AB 355."

5) **Related Legislation**: SB 735 (Cortese), would require a motion picture production firearms armorer or other specified individual handling a firearm, including an assault weapon, to apply for and obtain a specified state permit outlining for the possession and custody of the

firearm. SB 735 in currently pending in the Labor, Public Employment and Retirement Committee.

6) **Prior Legislation**: Roberti-Roos Assault Weapons Control Act – Ch. 19, § 3, Stats. 1989, defined and prohibited the possession of assault weapons, subject to certain exemptions including those for peace officers.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association (Sponsor)
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Turlock Associated Police Officers
Upland Police Officers Association

2 Private Individuals

Opposition

Brady Campaign
Brady Campaign California

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

AMENDMENT TO ASSEMBLY BILL NO. 355

Amendment 1
On page 2, strike out line 8 and insert:

training and being supervised by a firearms instructor.

- 0 -

Date of Hearing: March 7, 2023
Chief Counsel: Sandy Uribe

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

AB 360 (Gipson) – As Introduced February 1, 2023

SUMMARY: Provides that "excited delirium" is not a validly recognized medical diagnosis or cause of death. Specifically, **this bill**:

1) Defines "excited delirium" as "a state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain."

2) Prohibits the recognition of "excited delirium" as a valid medical diagnosis or cause of death in this State.

3) Prohibits a government entity, employee, or contractor from acknowledging "excited delirium" as a recognized medical diagnosis or cause of death.

4) Prohibits a coroner or medical examiner from listing "excited delirium" as the underlying cause on a death certificate or in any report.

5) Prohibits a peace officer from using the term "excited delirium" to describe an individual in a police report.

6) Prohibits a person from using the term "excited delirium" as part of an affirmative defense in a wrongful death suit.

EXISTING LAW:

1) Requires coroners to determine the manner, circumstances and cause of death in the following circumstances:

   a) Violent, sudden or unusual deaths;

   b) Unattended deaths;

   c) When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;

   d) When the death is related to known or suspected self-induced or criminal abortion;

   e) Known or suspected homicide, suicide, or accidental poisoning;

   f) Deaths suspected as a result of an accident or injury either old or recent;

g) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;

h) Deaths in whole or in part occasioned by criminal means;

i) Deaths associated with a known or alleged rape or crime against nature;

j) Deaths in prison or while under sentence;

k) Deaths known or suspected as due to contagious disease and constituting a public hazard;

l) Deaths from occupational diseases or occupational hazards;

m) Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;

n) Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;

o) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and,

p) Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

2) Requires the coroner or a deputy to sign the certificate of death when they perform a mandatory inquiry. (Gov. Code, § 27491, subd. (a).)

3) Allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)

4) Requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Gov. Code, § 27520, subd. (a).)

5) Allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Gov. Code, § 27520, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I am shocked and appalled that this term, which has never been recognized and has in fact been opposed by the medical community – including in a formal manner by the American Medical Association (AMA) – is used as an official cause of death by county coroners in the state of California."

2) **Excited Delirium**: There is no consistent definition of "excited delirium," but it has been characterized as a state of extreme mental and physiological excitement, featuring agitation, aggression hyperthermia, exceptional strength and endurance without fatigue. (See e.g. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088378/) However, "excited delirium," also sometimes called "agitated delirium," "is not listed in the World Health Organization's International Classification of Diseases nor the Diagnostic and Statistical Manual of Mental Disorders (DMS-5)[1], tools seen as the standard for medical diagnosis across the world." (https://www.cnn.com/2022/03/12/us/excited-delirium-police-deaths-study/index.html)

This diagnosis is controversial as the term is generally attributed to sudden unexplained deaths of individuals while in police custody, which may be used as a justification for excessive police force. (https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis) For example, it was relied on by the defense for former Minneapolis police officer Derek Chauvin as a contributing factor in George Floyd's death. (https://apnews.com/article/death-of-george-floyd-health-george-floyd-minneapolis-thomas-lane-1c6776d265e6f3c09e32df7039e80720) A 2020 review in Florida Today showed that nearly two-thirds of the deaths in the state listing the cause of death as "excited delirium" over the past decade occurred while the person who died was either in police custody or had some other interaction with law enforcement. (*Excited Delirium: Rare and Deadly Syndrome or a Condition to Excuse Deaths by Police?,* A. Sassoon, (Jan. 30, 2020), https://www.floridatoday.com/in-depth/news/2019/10/24/excited-delirium-custody-deaths-gregory-edwards-melbourne-taser/2374304001/) Similarly, an Austin American-Statesman investigation into non-shooting deaths people in police custody in Texas since 2005 revealed that more than one in six of the 289 such deaths have been attributed to "excited delirium." (*In Fatal Struggles with Police, a Controversial Killer is Often Blamed,* Dexheimer & Schwartz, May 27, 2017, https://www.statesman.com/story/news/investigates/2017/05/27/in-fatal-struggles-with-police-controversial-killer-is-often-blamed/8339157007/)

Moreover, critics note that the term has racist origins. The organization Physicians for Human Rights traced the history of the term. The term was coined by Drs. Charles Wetli and David Dishbain in 1985 in a case series on cocaine intoxication. The series described seven cocaine users who exhibited fear, panic, violent behavior, hyperactivity, hyperthermia, and/or unexpected strength. All of the individuals had been restrained (six by police and one by emergency room staff) and all died suddenly with respiratory arrest, with five of them reportedly dying in police custody. (See *"Excited Delirium" and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis*, Bhati et al., March 2022, pp. 18-19, https://phr.org/our-work/resources/excited-delirium/) Soon thereafter Wetli used this theory to explain how 12 Black women in Miami and were presumed to be sex workers died and were found to have small amounts of cocaine in their systems. Wetli theorized that the combination of cocaine and sex led to sexual excitement and death.[2] (*Id.* at p. 20.) Since all the women were Black, Wetli speculated that cocaine in combination with a blood type more common in Blacks was lethal. (*Id.* at p. 21.) At the same time Wetli "continued to promote a corresponding theory of Black male death from cocaine-related delirium, without any

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[1] The DSM-5 recognizes "delirium" as a clinical entity, with "hyperactive," "hypoactive," and "mixed" delirium subtypes, but not "excited delirium."

[2] Investigators later came to hold a serial killer responsible for the deaths.

scientific basis: "Seventy percent of people dying of coke-induced delirium are black males, even though most users are white. Why? It may be genetic." (*Id.* at p. 23.) Rather than being discredited for being wrong about the murders, from there the use of the term grew.

In 2004, Wetli coauthored a National Association of Medical Examiners position paper that continued to link cocaine use to "excited delirium." (*"Excited Delirium" and Deaths in Police Custody*, *supra*, at p. 23.) And in 2005, Theresa Di Maio, a psychiatric nurse, and her husband, Dr. Vincent Di Maio, a forensic pathologist who was the chief medical examiner of a county in Texas and editor of the American Journal of Medicine and Pathology, published a book on "excited delirium syndrome. (*Id.* at p. 24.) A few years later, TASER International (now Axon Enterprise), which produces the Taser line of stun guns, purchased copies of the book and began distributing it and other materials on excited delirium at conferences of chiefs of police and medical examiners. (*Id.* at p. 26.)

In 2009 the American College of Emergency Physicians formally recognized "excited delirium" as a unique syndrome. (https://www.ojp.gov/ncjrs/virtual-library/abstracts/white-paper-report-excited-delirium-syndrome)

More recently, however, in 2020 the American Psychiatric Association approved a position statement on concerns about use of the term "Excited Delirium." (https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Position-Use-of-Term-Excited-Delirium.pdf .) Similarly, in 2021 the American Medical Association formally opposed excited delirium as a valid medical diagnosis. (https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis.) Likewise, Physicians for Human Rights takes the position that "excited delirium" is a descriptive term of multiple signs and symptoms, not a medical diagnosis, and accordingly should not be cited as a cause of death. (https://phr.org/our-work/resources/excited-delirium/).

This bill would prohibit the use of the term "excited delirium" as a valid medical diagnosis or cause of death in this State. It would further prohibit coroners and medical examiners from listing it as a cause of death on a death certificate or autopsy report. Additionally, it would prohibit law enforcement from using the term to describe the condition of an individual in an incident report. Finally, it would be prohibited as an affirmative defense in wrongful death civil suits.

As to the use of the term in law enforcement incident reports, the Commission on Peace Officer Standards and Training (POST) has informed this committee that the term is not used in either the basic-training program or the field-training program because it is not a recognized medical term. However, it appears to have been recognized by at least some California law enforcement agencies in the past. For example, in August 2022, the Bay Area Rapid Transit Police Department issued a new release advising "excited delirium" was removed from BART Police Department policy manual and would no longer be used in their written reports. (https://www.bart.gov/news/articles/2022/news20220818)

The term also has been used by at least one coroner's office in California. In December 2020, Angelo Quinto died in police custody while suffering a mental health episode. Quinto's family alleged that a responding officer knelt on Angelo's neck for nearly five minutes while another officer restrained his legs, causing Angelo to lose consciousness. He later died in the

hospital. The Contra Costa County's Coroner Office, which is combined with its Sheriff's office, ruled the cause of Angelo's death was a result of "excited delirium." (https://www.mercurynews.com/2021/08/20/death-of-angelo-quinto-after-struggle-with-cops-blamed-on-excited-delirium-a-controversial-diagnosis-the-ama-says-is-used-to-shield-police-violence.)

TASER International has successfully used "excited delirium" as an affirmative defense in civil suits. In 2007, National Public Radio reported that the company has successfully defended itself against at least eight lawsuits involving people who died in police custody, arguing that the cause of death was excited delirium, not the taser. (*Tasers Implicated in Excited Delirium Deaths,* L. Sullivan, Feb. 27, 2007, https://www.npr.org/2007/02/27/7622314/tasers-implicated-in-excited-delirium-deaths; see also https://www.motherjones.com/politics/2009/02/tasers-delirium-defense/.)

All of the aforementioned uses would be prohibited by this bill.

3) **Argument in Support**: According to the *California Public Defenders Association*, "Excited Delirium is not a medical diagnosis and the use of certain pharmacological interventions solely for a law enforcement purpose without a medical diagnosis or reason is opposed by major medical and psychiatric associations. In a June 2021policy adopted by physicians, residents, and medical students at the American Medical Association (AMA) the association opposes the use of "excited delirium "as a medical diagnosis and warns against the use of pharmacological interventions without a medical reason. Further, it opposes the use of the term until a clear set of diagnostic criteria has been established. To date, no such diagnostic criteria has been established. The AMA also denounces 'excited delirium'as a sole justification for law enforcement use of excessive force. (AMA policy June 14, 2021.)

"The American Psychiatric Association's (APA) position (approved by the APA Assembly in November 2020 and by the APA Board of Trustees in December 2020) is that the term 'excited delirium' is too non-specific to meaningfully describe and convey information about a person. 'Excited Delirium' should not be used until a clear set of diagnostic criteria are validated. To date, no such clear set of diagnostic criteria have been validated. In their call for detailed study and investigation by the U.S. Department of Health and Human Services, they also call for evidence based protocols to be developed and implemented including barring the use of Ketamine and other sedating medications to achieve incapacitation solely for law enforcement purposes. The APA has not recognized excited delirium as a mental disorder, and it is not included in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), a manual relied upon by professionals internationally, nor is it found in the International Classification of Diseases.

"While it has been suggested in some articles that the American College of Emergency Physicians (ACEP) has accepted the 'diagnosis' of ExD, the leadership in that organization testified at the trial of Eric Chauvin (for the murder of George Floyd) that the organization had not adopted this policy paper. On the other hand, the American Academy of Emergency Medicine (AAEM) recognizes that current emergency medicine does not support scientific evidence for "excited delirium" as a medical diagnosis and recommends that ExD should not be used as a cause of death on a death certificate.

"A meta-analysis of ExD and deaths in police custody completed by Physicians for Human Rights, issued March of 2022 found that ExD is a 'go to diagnosis for medical examiners and coroners to use to explain deaths in police custody.' 'A review of the history of the term cannot be disentangled from its racist and unscientific origins'. The AMA finds that the term ExD has been misplaced and diagnosed disproportionally in law enforcement-related deaths of Black and Brown individuals, who are also more likely to experience sedative intervention instead of behavioral de-escalation.

"Excited Delirium is not a valid independent medical or psychiatric diagnosis. There is no clear or consistent definition, established etiology or known underlying pathology.

"For these reasons, on behalf of CPDA, we respectfully urge your 'YES' vote on AB 360 when it comes before you in Assembly Public Safety."

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

5) **Prior Legislation**: AB 1608 (Gipson), of the 2021-2022 Legislative Session, would have removed the ability of counties to consolidate the offices of the sheriff and coroner, and specified that if the offices of sheriff and coroner were consolidated before January 1, 2023, the board of supervisors must separate those offices. AB 1608 failed passage in the Senate.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Public Defenders Association
Consumer Attorneys of California
Ella Baker Center for Human Rights
Oakland Privacy

Opposition

None submitted.

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

Date of Hearing: March 7, 2023
Counsel: Andrew Ironside

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

AB 390 (Haney) – As Introduced February 2, 2023

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to partner with academic researchers to conduct an assessment of existing officer training. Specifically, **this bill**:

1) Requires POST to do all of the following:

   a) Partner with academic researchers to conduct an assessment of existing peace officer training requirements and determine how well the existing officer training requirements are working for peace officers in the field;

   b) Adjust training mandates as needed based on its findings, including reducing or eliminating trainings that are not effective or no longer meet the needs of the workforce;

   c) Continually assess new mandated training requirements;

   d) Revise its process for evaluating law enforcement training to include additional course certification criteria that incorporates training outcomes; and,

   e) Establish a process to do all of the following:

      i) Collect and secure data, which must be kept confidential except when made available to POST or research institution for analysis, for research purposes in order to improve training to encourage more rigorous analysis of officer training programs;

      ii) Make summary or disaggregated data available to the public; and,

      iii) Provide periodic updates to the Legislature, after January 1, 2026, regarding POST's assessment of existing peace officer training requirements, including its findings on how well those requirements are working for peace officers in the field, and POST's continual assessment of new mandated training programs.

2) Requires POST to establish a permanent academic review board to do all of the following:

   a) Regularly review and update POST's training standards and curriculum to ensure alignment with the latest scientific research;

   b) Survey current research on peace officer training and other relevant topics and advise POST on how to incorporate findings into new and existing standards and training;

c) Advise POST on strategies to define and test training outcomes; and,

d) Advise POST on procedures to address data confidentiality issues that may arise from sharing data for research purposes.

3) States that POST shall submit a report to the Legislature on or before January 1, 2026, that includes all of the following:

a) POST's assessment of existing peace officer training requirements, including its findings on how well the existing officer training requirements are working for peace officers in the field; and

b) POST's continual assessment of new mandated training requirements.

4) Provides that data or other information collected for the purpose of research, evaluation, tracking or course development that personally identifies a peace officer, peace officer trainee, or student of a regular basic course of peace officer training, is confidential and shall not be released to the public unless otherwise subject to disclosure, as specified.

5) States that the Legislature finds and declares that the provisions of this bill impose a limitation on the public's right of access under the California Constitution to meetings of public bodies or the writings of public officials and agencies.

6) States that, pursuant the public's right of access under the California Constitution, the Legislature makes and declares, to demonstrate the interest protected by this limitation and the need for protecting that interest, that it is generally in the public interest to protect the privacy of a peace officer, peace officer trainee, or student who attends training courses by protecting their personal identifying information as it relates to testing and training evaluation for research purposes.

EXISTING LAW:

1) Requires every sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized to maintain a police department, who is first employed after January 1, 1975, to successfully complete a course of trained prescribed by POST before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by POST. (Pen. Code, § 832.3(a).)

2) Requires a police chief, or any other person in charge of a local law enforcement agency, appointed on or after January 1, 1999, as a condition of continued employment, to complete a course of training within two years of appointment, as specified. (Pen. Code, § 832.3(a).)

3) Requires POST, for the purpose of ensuring competent peace officers and standardized training, to develop a testing program, including standardized tests that enable comparisons between presenters of the training and assessments of trainee achievement. (Pen. Code, § 832.3(b).)

4) Establishes POST to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate

program that awards different levels of certification based on training, education, experience, and other relevant prerequisites and states the powers of POST, including among others, to develop and implement programs to increase the effectiveness of law enforcement, to secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, §§ 830-832.10; 13500 *et seq.*)

5) Requires POST to develop and disseminate trainings for peace officers, including, but not limited to:

   a) Use of tear gas (Pen. Code, § 13514);

   b) SWAT operations (Pen. Code, § 13514.1);

   c) Handling of acts of civil disobedience (Pen. Code, § 13514.5);

   d) Elder and dependent adult abuse (Pen. Code, § 13515);

   e) Persons with mental disabilities, autistic spectrum disorders, developmental disabilities, and substance abuse disorders (Pen. Code, §§ 13515.25, 13515.26, 13515.27, 13515.29, 13515.295, 13515.30, 13515.35, 13519.2);

   f) Crisis intervention and behavioral health training (Pen. Code, § 13515.28);

   g) Traumatic Brain Injury and Post Traumatic Stress Disorder (Pen. Code, § 13515.36);

   h) High technology crimes and computer seizure (Pen. Code, § 13515.55);

   i) Sexual assault cases (Pen. Code, § 13516);

   j) Commercial sexual exploitation of children, child abuse or neglect, minor witnesses, child safety, sudden infant death syndrome (Pen. Code, § 13516.5, 13517, 13517.5, 13517.7, 13519.3);

   k) First aid, cardiopulmonary resuscitation (Pen. Code, §§ 13518, 13518.1);

   l) Basic maritime operations (Pen. Code, § 13518.5);

   m) Missing persons investigations, missing persons (Pen. Code, §§ 13519.07, 13519.1);

   n) Stalking (Pen. Code, § 13519.05);

   o) Racial identity and cultural diversity, racial or identity profiling, sexual orientation and gender identity, hate crimes, sexual harassment (Pen. Code, §§ 13519.4, 13519.41, 13519.6);

   p) Gang and drug enforcement (Pen. Code, § 13519.5);

q) Crimes against homeless persons (Pen. Code, § 13519.64);

r) High speed vehicle pursuits (Pen. Code, § 13519.8);

s) Criminal investigations (Pen. Code, § 13519.9);

t) Use of force (Pen. Code, § 13519.10);

u) Terrorism (Pen. Code, § 13519.12);

v) Human trafficking (Pen. Code, § 13519.14); and,

w) Anti-reproductive rights crimes. (Pen. Code, § 13519.15.)

6) Requires the office of the Chancellor of California Community Colleges to develop a modern policing degree program with POST and other stakeholders and submit a report on the recommendations to the Legislature outlining a plan to implement the program on or before June 1, 2023. (Pen. Code, § 135611.1.)

7) Requires POST to post on its internet website all current standards, policies, practices, operating procedures and education and training materials, as specified. (Pen. Code, § 13650.)

8) States that information that identifies the testing results of a particular student of a regular basic course of peace officer training is confidential and shall not be released to the public unless otherwise subject to disclosure, as specified. (Pen. Code, § 13510.06.)

9) States that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to the public. (Cal. Const., Art. I, § 3, subd. (b)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The State does not have a process that allows it to assess which peace officer trainings actually impact officer behavior in the field. The Legislature can continue to require peace officer trainings without any evidence for the need or benefit of the training. An evaluation process that requires the Commission on Peace Officer Standards and Training (POST) to partner with academic researchers and assess the success of all current peace officer trainings will clearly show which trainings are working and which are not. This will allow the State to make informed decisions and save money when mandating any future peace officer trainings."

2) **Current POST Training:** POST was created by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. According to the POST website, the Regular Basic Course Training includes 43 separate topics, called learning domains. These range from introduction to criminal law and procedure to terrorism awareness. (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.>)

3) **Need for the Bill:** In Fall 2020, the Little Hoover Commission (Commission) launched a study to examine the role of POST in shaping law enforcement training standards for California's peace officers. According to the Commission:

> "California spends millions on law enforcement training each year and has certified thousands of courses for police officers. Yet, the state does not require serious or thorough evaluation of how that training affects officer behavior on the job. Without research and assessment, it is impossible to know that this investment has produced, or is likely to produce, the results Californians want to see.
>
> "Often, this legislation is intended to bring attention to laws already in place or to respond to accounts in the media or events highlighted by stakeholders or public interest groups. Over the last decade, lawmakers introduced approximately 65 bills that addressed peace officer training, more than half of which became law. Among their changes, these bills required pre-employment training in principled policing, mental health, domestic violence, and gun violence restraining orders; added hours to on the-job training for current officers; and mandated specialized training for maritime, campus, or tribal officers.
>
> "In recent years, the pace with which lawmakers have weighed in has significantly increased. During the five-year period between 2015-2020, lawmakers introduced an average of more than nine bills related to officer training each year – almost double the average between 2010 and 2014.
>
> "This model leaves little room for thoughtful priority setting and evaluation. The Legislature does not require after-the fact assessment of training, nor does it provide POST the resources to do so. Thus, the state fails to look back and consider whether the training addressed the problems it intended to solve, whether it resulted in any unintended consequences in officer behavior, or if it remains relevant for the realities of the job today."

(*Law Enforcement Training: Identifying What Works for Officers and Communities*, Little Hoover Commission (Nov. 2021), at p. 6. Available at: https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf [as of March 14, 2022].)

The Commission recommended, among other items, that POST encourage more rigorous analysis of officer training programs; establish a process to collect and secure data for research purposes in order to improve training; foster collaboration with academic researchers; establish a permanent academic review board to ensure training standards are aligned with the latest scientific research and advise POST on how to incorporate research findings into new and existing standards and training. (*Id.*, at p.3.)

Officer training is a fundamental component of policing. However, decisions about trainings are often influenced by trends and current events, with no evaluation of whether the training will be effective and will meet its intended outcome. Under existing law, there is no

requirement that mandated peace officer training courses be periodically evaluated for their effectiveness.

This bill would codify several of the recommendations of the Commission. Specifically, this bill would require POST to partner with academic researchers to conduct an assessment of existing officer training, and establish a permanent academic review board to regularly review and update POST's training standards and curriculum to ensure alignment with the latest scientific research.

4) **The Peace Officers Education and Age Conditions for Employment (PEACE) Act:** AB 89 (Jones-Sawyer), Chapter 405, Statues of 2021, the PEACE Act, requires all peace officers to be at least 21 years of age at the time of appointment and meet specific educational requirements, including the modern policing degree program and bachelor's degree in the discipline of their choosing as minimum requirements for employment as a peace officer.

   The PEACE Act also requires POST, and various stakeholders from law enforcement, academia, and community organizations to serve as advisors to the office of the Chancellor of the California Community Colleges to develop a modern policing degree program. (Pen. Code, §§ 1031.4; 13511.1.) By June 1, 2023, the office of the Chancellor of the California Community Colleges is required to submit a report to the Legislature outlining a plan to implement the modern policing degree program. (Pen. Code, § 13511.1.) Within two years of the submission of the report to the Legislature, POST will be required to approve and adopt the minimum education requirements for employment as a peace officer, based on the recommendations in the report. (*Ibid.*)

   The PEACE ACT established higher education standards for minimum qualification for employment as a peace officer in this State. This bill would require POST to collaborate with researchers to conduct an assessment of existing officer training courses, such as training courses for newly-appointed peace officers and continuing professional training, including but not limited legislatively mandated officer training courses and the basic officer training course. Accordingly, this bill is not duplicative of the PEACE Act.

5) **Argument in Support**: According to the *Little Hoover Commission*, "The Little Hoover Commission supports AB 390, the measure you authored that would require the Commission on Peace Officer Standards and Training (POST) to partner with academic researchers to conduct an assessment of existing peace office training requirements and determine how well they are working for peace officers in the field. Among other things, the bill would require POST to establish a process to collect and secure data for research as well as a permanent academic review board.

   "In its 2021 report, *Law Enforcement Training: Identifying What Works for Officers and Communities*, the Commission found that California spends millions of dollars on law enforcement training each year yet does not require serious or thorough evaluation of how that training affects office behavior on the job. Without research and assessment, it is impossible to know that this investment has produced, or is likely to produce, the results Californians want to see. To assess the success and relevancy of POST's training programs, the Commission recommended that POST partner with academic researchers to assess existing officer training requirements and determine how well they are working for officers

in the field. Additionally, the Commission called on POST to establish a process to collect and secure data for research purposes in order to improve training as well as a permanent academic review board to ensure POST's training standards and curriculum are aligned with the latest scientific research.

"AB 390 would carry out these recommendations."

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

7) **Related Legislation**:

   a) AB 21 (Gipson), would require POST to revise crisis intervention behavioral health training to include instruction on how to effectively interact with persons with Alzheimer's disease or dementia. AB 21 is currently pending in the Assembly Appropriations Committee.

   b) AB 1158 (Ting), would require POST to include in its annual report the Legislature information about when training was made available and how frequently it was offered. AB 1158 is currently pending referral in the Assembly Rules Committee.

8) **Prior Legislation**:

   a) AB 2429 (Quirk), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 2492 was held in the Senate Appropriations Committee.

   b) AB 2583 (Mullin), of the 2021-2022 Legislative Session, would have required POST to revise their training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's. AB 2583 was held in the Senate Appropriations Committee.

   c) SB 494 (Dodd), of the 2021-2022 Legislative Session, would have required POST to implement a course of instruction for the training of law enforcement officers in the use of advanced interpersonal communication skills, and requires a course in science-based interviewing to be included at the Robert Presley Institute of Criminal Investigation. SB 494 was vetoed by the Governor.

   d) AB 165 (Gabriel), of the 2019-2020 Legislative Session, would have required POST to develop and implement a course of training on gun violence restraining orders. AB 165 was held by the Senate Appropriations Committee on the Suspense File.

   e) AB 332 (Lackey), Chapter 172, Statutes of 2019, required POST to submit a report to the Legislature including data on, among other things, the number of students who attended an academy, the number and percentage of students who successfully completed and who failed to successfully complete an academy.

   f) AB 2504 (Low), Chapter 969, Statutes of 2018, required POST to develop and implement a course of training regarding sexual orientation and gender identity minority groups in California.

g) AB 1227 (Cooper), of the 2015-2016 Legislative Session, would have required POST to establish and keep updated a continuing education training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. AB 1227 was held by the Assembly Appropriations Committee in the Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign California
California Public Defenders Association (CPDA)
Little Hoover Commission

1 Private Individual

Opposition

None

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

Date of Hearing: March 7, 2023
Counsel: Liah Burnley

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

AB 399 (Ting) – As Introduced February 2, 2023

SUMMARY: Increases the time required for law enforcement agencies to report vehicle pursuit data to California Highway Patrol (CHP) from 30 days after a pursuit to 45 days after a pursuit.

EXISTING LAW:

1) Requires every state and local law enforcement agency to report all motor vehicle pursuit data to CHP. (Veh. Code, § 14602.1, subd. (a).)

2) States that reporting of all motor vehicle pursuit data, shall include, but not be limited to, all of the following:

   a) Whether any person involved in a pursuit or a subsequent arrest was injured, specifying the nature of that injury;

   b) The violations that caused the pursuit to be initiated;

   c) The identity of the peace officers involved in the pursuit;

   d) The means or methods used to stop the suspect being pursued;

   e) All charges filed with the court by the district attorney;

   f) The conditions of the pursuit, including, but not limited to, duration, mileage, number of peace officers involved, maximum number of law enforcement vehicles involved, time of day, weather conditions, and maximum speeds;

   g) Whether a pursuit resulted in a collision, and a resulting injury or fatality to an uninvolved third party, and the corresponding number of persons involved;

   h) Whether the pursuit involved multiple law enforcement agencies; and,

   i) How the pursuit was terminated. (Veh. Code, § 14602.1, subd. (b).)

3) Provides that all motor vehicle pursuit data shall be submitted to CHP no later than 30 days following a motor vehicle pursuit. (Veh. Code, § 14602.1, subd. (d).)

4) Requires CHP to submit annually to the Legislature a report that includes, but is not limited to, the following information:

a) The number of motor vehicle pursuits reported to CHP during that year;

b) The number of those motor vehicle pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved third party occurred; and,

c) The total number of uninvolved third parties who were injured or killed as a result of those collisions during that year. (Veh. Code, § 14602.1, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Providing agencies additional time to submit reports addresses potential workload concerns when preparing them and aids in ensuring the information provided is complete and accurate."

2) **Vehicle Pursuit Reports**: Pursuant to Vehicle Code § 14602.1, all state and local law enforcement agencies are required to report to CHP, on a form approved by CHP, all vehicle pursuit data. According to CHP, "an event involving one or more law enforcement officers attempting to apprehend a suspect operating a motor vehicle while the suspect is attempting to avoid arrest by using high speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to the officer's signal to stop. (CHP, *Report to the Legislature* (2020) <https://www.chp.ca.gov/Documents/Police_Pursuits_SB_719_%202020.pdf> [as of Feb. 24, 2023].)

   SB 719 (Romero), Chapter 485, Statutes of 2005, which took effect January 1, 2006, requires law enforcement agencies to establish pursuit policies, provide ongoing pursuit training to their officers, and ensure all pursuits are reported and submitted to CHP within 30 days. CHP maintains a Pursuit Reporting System (PRS), which provides the ability to automate pursuit reporting, review, and critique processes. The PRS is comprised of a Web-based front-end application, and a Microsoft SQL database back-end application. The PRS includes information received from allied law enforcement agencies throughout California via the CHP 187A, Allied Agency Pursuit Report. The CHP 187A is submitted via mail, email or fax. (CHP, *Report to the Legislature*, supra, at p. 1 [as of Feb. 24, 2023].)

   CHP is required to submit an annual report to the Legislature which includes, but is not limited to: the total number of pursuits reported to the CHP during that year, the total number of pursuits involving a collision in which an injury or fatality to an uninvolved third party occurred, and the total number of uninvolved third parties who were injured or killed as a result of those collisions. (Veh. Code, § 14602.1.)

   This bill would increase the time required for law enforcement agencies to report vehicle pursuit data CHP from 30 days after a pursuit to 45 days after a pursuit.

3) **Prior Legislation**:

   a) SB 185 (Thompson), Chapter 1048, Statutes of 1991, required law enforcement agencies to report vehicle pursuit data to CHP.

b) SB 719 (Romero), Chapter 485, Statutes of 2005, among other provisions, required law enforcement agencies to report vehicle pursuit data to CHP no later than 30 days following a motor vehicle pursuit.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted

Opposition

None submitted

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