California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, May 19, 2020
10 a.m. -- State Capitol, Room 4202

HEARD IN FILE ORDER

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

1.	Bauer-Kahan	AB 2483	County jails: recidivism: reports.
2.	Bigelow	AB 2340	Peace officers: deputy sheriffs.
3.	Bonta	AB 3228	Private detention facilities.
4.	Carrillo	AB 3052	Forced or Involuntary Sterilization Compensation Program.
5.	Cervantes	AB 2606	Criminal justice: supervised release file.
6.	Cervantes	AB 2808	Dismissal of convictions: protective orders.
7.	Chiu	AB 2847	Firearms: unsafe handguns.
8.	Gabriel	AB 2236	Peace officer training: hate crimes.
9.	Gabriel	AB 2617	Firearms: gun violence restraining orders.
10.	Gipson	AB 2554	Correctional personnel: peer support.
11.	Gipson	AB 2655	Invasion of privacy: first responders.
12.	Irwin	AB 2532	Firearms: gun violence restraining orders.
13.	Jones-Sawyer	AB 2321	Juvenile court records: access.
14.	Jones-Sawyer	AB 2891	Peace officers: California Science Center and Exposition Park.
15.	Jones-Sawyer	AB 3043	Corrections: confidential calls.
16.	Kamlager	AB 1950	Probation: length of terms.
17.	Lackey	AB 2481	Sexual assault forensic evidence: testing.
18.	Lackey	AB 2833	Domestic violence: victim's information card.
19.	McCarty	AB 2342	Parole.
20.	Muratsuchi	AB 2362	Firearms dealers: conduct of business.
21.	Patterson	AB 3035	Animal welfare.
22.	Ramos	AB 3099	Department of Justice: law enforcement assistance with tribal issues.
23.	Reyes	AB 2147	Convictions: expungement: inmate hand crews.
24.	Reyes	AB 2426	Victims of crime.
25.	Blanca Rubio	AB 2741	Children's advocacy centers.
26.	Santiago	AB 2699	Firearms: unsafe handguns.
27.	Mark Stone	AB 2425	Juvenile police records.
28.	Mark Stone	AB 2512	Death penalty: person with an intellectual disability.

Date of Hearing: May 19, 2020
Counsel: Nikki Moore

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

AB 2483 (Bauer-Kahan) – As Amended May 11, 2020

SUMMARY: Requires the sheriff in each county to compile and send data to the Board of State and Community Corrections (BSCC) on antirecidivism programs and success rates in reducing recidivism, and report the data to the Legislature. Specifically, **this bill**:

1) States that on or before January 1, 2023, and annually thereafter, the sheriff in each county shall compile and submit the following data to the BSCC:

   a) Data on each of the antirecidivism programs they provide inmates in their county jail facilities; and,

   b) The success rates in reducing recidivism in each of those programs.

2) States that for statistical purposes, any individual who completes an antirecidivism program offered at the jail and recidivates shall be counted as part of the data collected about the success rate of that program.

3) Requires that, on or before July 1, 2023, and annually thereafter, the BSCC shall compile a report based upon the findings and submit the report to the Legislature.

4) Provides that this section shall remain in effect only until January 1, 2028, and as of that date is repealed.

5) Defines "recidivism" to mean "that a person received a new felony or misdemeanor conviction or probation violation within three years from the offender's previous criminal conviction."

EXISTING LAW:

1) Establishes, commencing July 1, 2012, BSCC and states that all references to the Board of Corrections or the Corrections Standards Authority shall refer to BSCC. (Pen. Code, § 6024, subd. (a).)

2) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective,

promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

3) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd. (a).)

4) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board's Internet Web site. It is the intent of the Legislature that the board promotes collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)

5) Authorizes BSCC to do either of the following:

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill will require county jail data collection aimed at understanding the spending and effectiveness of the county's rehabilitation programs. Counties have an outsized role in the criminal justice system, and understanding their rehabilitation programming, especially after realignment, should be a priority. This data will allow both state legislators and local government officials to craft better policy by creating a way to gauge what recidivism reduction programs are working."

2) **Purpose of This Bill**: According to the author, "AB 2483 will require county sheriffs statewide to compile and submit data on (1) offender recidivism programs provided to inmates in county jails and (2) success rates in reducing recidivism in those programs, to guide the Legislature and local government actors in making decisions on criminal justice policy."

In describing the problem meant to be addressed with the bill, the author has explained, "Despite California allocating significant funding to counties for recidivism reduction programming, there has been no regular or consistent data collection on the part of the counties for evaluating programs' success. Existing research shows variations in recidivism outcomes post-AB 109. The differences in counties' success rates could be linked to variances in county capacity and experience providing recidivism reduction services. Additionally, some variation could be due to counties' differences in recidivism reduction strategy. The differences in approach create the potential for counties to learn from each other over time. However, counties won't be able to learn from each other or quantify the success or failures of their programming without having a mechanism to capture the data."

According to the author, "AB 2483 will require that county sheriffs compile and supply data on recidivism reduction programs and program results so that this data can be reported to the Legislature for critical evaluation of these programs. Counties will benefit by being able to evaluate the effectiveness of their programs as compared to others in the state. In short, governments will obtain for the first time statewide data showing what is working and what is not working, in order to plan the best path forward in achieving successful recidivism reduction."

3) **Data Collection Consideration**: This bill requires each sheriff department in the state to track recidivism rates of the individuals that each department arrests. However, it is unclear whether the data will provide a full picture of recidivism rates if sheriffs are not apprised of recidivism occurrences in other jurisdictions. The author may want to consider how to address this moving forward.

4) **Argument in Support**: According to the *Pacific Juvenile Defender Center*: "This bill will require local Sheriffs to report on the efficacy of the anti-recidivism programs administered in their local county jails to the California Board of State and Community Corrections. Furthermore, the BSCC must collect the data and submit a report to the Legislature. This bill supports the goals of realignment and hold officials accountable for the success of their programs. As the BSCC regulates many of the standards regarding juvenile incarceration, the youth will benefit from the reporting requirement."

5) **Argument in Opposition**: According to the *California State Sheriffs' Association*: "Sheriffs across the state provide meaningful rehabilitative programming to jail inmates with the desire to enhance formerly incarcerated persons' re-entry into society and reduce the likelihood that people re-offend. Unfortunately, this bill imposes vague and burdensome data collection requirements without any guarantee of funding to cover the bill's costs.

"AB 2483 requires sheriffs to report 'data on each of the antirecidivism programs they provide inmates in their county jail facilities.' The scope of what is sought by this language is unclear and is likely to yield disparate responses from the field. Additionally, the bill's definition of 'recidivism' could be interpreted as requiring county jails to ascertain from courts, other jails, or state prisons, potentially including such entities in other states, information as to subsequent convictions. Requiring such would be very expensive; a problem exacerbated by the fact that the bill provides no funding for its requirements.

"Again, sheriffs and CSSA see the virtue in providing programming and reducing recidivism.

Unfortunately, due to the bill's ambiguous language and lack of funding, CSSA must respectfully oppose AB 2483."

6) **Prior Legislation**:

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

b) AB 2521 (Hagman), of the 2013-2014 Legislative Session, would have required the data on recidivism rates to include, as it becomes available, recidivism rates for offenders one, two, and three years after their release in the community. AB 2521 was held on suspense in the Senate Appropriations Committee.

c) AB 1050 (Dickinson), Chapter 270, Statutes of 2014, required the Board of State and Community Corrections (BSCC) to develop definitions relevant to data collection and evidence-based programs and practices, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Ella Baker Center for Human Rights
Los Angeles County District Attorney's Office
Pacific Juvenile Defender Center
San Francisco Public Defender

Oppose

California State Sheriffs' Association

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

Date of Hearing: May 19, 2020
Chief Counsel: Gregory Pagan

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

AB 2340 (Bigelow) – As Introduced February 18, 2020

SUMMARY: Adds the counties of Del Norte, Mono, and San Mateo to the list of specified counties that employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of duties related to his or her employment.

EXISTING LAW:

1) Provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, § 830.1 subd. (c).)

2)

3) Provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers under this section do not have the right to carry or possess firearms in the performance of his or her duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831.)

4)

5) Provides that notwithstanding existing law, law enforcement agencies in counties with a population of 425,000 or less and the Counties of San Diego, Fresno, Kern, Napa, Riverside, Santa Clara, and Stanislaus may employ custodial officers with enhanced powers. The enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody. (Pen. Code, § 831.5, subd. (a).)

6)

7) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the Commission on Peace Officers Standards and Training (POST) course. (Pen. Code, § 832 subd. (b).)

8)

9) Provides that the enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties such as while assigned as a court bailiff, transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, escapes, or rescues. (Pen. Code, § 831.5 subd. (b).)

10)

11) Provides that enhanced powers custodial officers may also make warrantless arrests within the facility. (Pen. Code, § 831.5 subd. (f).)

12)

13) Requires a peace officer to be present in a supervisorial capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5 subd. (d).)

14) Provides that custodial officers employed by the Santa Clara County, Napa County, and Madera DOC's are authorized to perform the following additional duties in the facility:

   a) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

   b) Search property, cells, prisoners, or visitors;

   c) Conduct strip or body cavity searches of prisoners as specified;

   d) Conduct searches and seizures pursuant to a duly issued warrant;

   e) Segregate prisoners; and,

   f) Classify prisoners for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5 subds. (g), (h) & (i).)

15) States that it is the intent of the Legislature, as it relates to Santa Clara, Madera, and Napa Counties, to enumerate specific duties of custodial officers and to clarify the relationship of correctional officers and deputy sheriffs in Santa Clara County. And, that it is the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process. The language is, additionally, clear that it should not be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs or to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs. (Pen. Code, § 831.5 subd. (j).)

16) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by POST and that, after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or

approved by POST. (Pen. Code, § 832 subd. (a).)

17)
18) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832 subd. (b).)

19)
20) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832 subd.(c).)

21)
22) Provides that any person completing the POST training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of powers as a peace officer. This requirement does not apply to any person who meets any of the following requirements (Pen. Code, § 832 subd. (e)(1).):

23)
a) Is returning to a management position that is at the second level of supervision or higher (Pen. Code, § 832 subd. (e)(2)(A).);

b)
c) Has successfully requalified for a basic course through POST (Pen. Code, § 832 subd. (e)(2)(B).);

d)
e) Has maintained proficiency through teaching the POST course (Pen. Code, § 832 subd (e)(2)(C).);

f)
g) During the break in California service, was continuously employed as a peace officer in another state or at the federal level (Pen. Code, § 832 subd. (e)(2)(D).); and,

h)
i) Has previously met the testing requirement, has been appointed a peace officer under Penal Code Section 830.1(c), and has continuously been employed as a custodial officer as defined in Penal Code Section 831 or 831.5 since completing the POST course. (Pen. Code, § 832 subd. (e)(2)(E).).

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Allowing a limited number of correctional officers to be included in the definition of peace officer in Mono, San Mateo, and Del Norte counties will lead to increasing effectiveness of public safety in these communities. The number of deputy sheriffs' in certain regions of the state have been decreasing, and AB 2340 will help add to the number of qualified individuals to perform these tasks."

2) **Benefits Granted to Those Designated as Custodial Deputy Sheriffs**: Penal Code § 830.1 subd. (c) custodial deputy sheriffs classification is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code §§ 831 and 831.5 are not peace officers, whereas a Penal Code § 830.1 subd. (c) custodial deputy sheriff is a peace officer, "who is employed to perform duties exclusively or initially relating to custodial assignments." (Penal Code § 830.1 subd. (c).) One of the most significant differences between the Penal Code § 830.1 subd. (c) custodial deputy sheriffs and Penal Code §§ 831 and 831.5 custodial officers is that as "peace officers" the Penal Code Section 830.1(c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights Act. (Government Code § 3301 et seq.)

   Madera and Yuba – and all counties – may utilize Penal Code § 831 non-peace officer custodial officers; however, these officers may not carry firearms. (Penal Code § 831 subd. (b).) However, there are limitations on the authority and use of Penal Code Section 831.5 custodial officers. For example, Penal Code § 831.5 custodial officers may not perform strip searches (unless they are employed in Santa Clara County, Napa County, or Madera County), have limited arrest powers, and are limited in their "armed duty" roles. Another limitation on the use of both Penal Code § 831 and 831.5 non-peace officer custodial officers is that whenever 20 or more of such officers are on duty there must be at least one Penal Code § 830.1 peace officer, who has received the full 664-plus hour basic training for Penal Code § 830.1(a) deputy sheriffs, on duty at the same time to supervise the custodial officers. (Penal Code §§ 831 subd. (d) and 831.5 subd, (d).)

3) **Governor's Veto**: AB 524 (Bigelow), of the 2019-2020 Legislative Session, was almost identical to this bill, but did not include Del Norte county. The Governor in his veto message stated, "This bill would add Mono, San Mateo, and Del Norte Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to custodial assignments are also considered peace officers whose authority extends generally to any place in the California while engaged in the performance of their duties.

   "I understand these counties desire to add additional capacity to their law enforcement efforts, but these discussions merit additional scrutiny in a more comprehensive manner. A number of bills have been enacted over recent decades-and several in recent years-applying this bill's provisions to specific counties, but this is a piecemeal approach that I can not support."

4) **Prior Legislation**:

   a) AB 574 (Villaraigosa), Chapter 950, Statutes of 1996, added Penal Code Section 830.1(c), which allowed the Los Angeles County Sheriff to hire a "second tier" of sheriff's deputies who "are employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates."

   b) SB 1762 (Alpert), Chapter 61, Statutes of 2000, and SB 926 (Battin), Chapter 68, Statutes of 2001, amended Penal Code Section 830.1(c) to provide peace officer status while on duty only to Riverside County and San Diego County deputy sheriffs employed

to provide custodial care and supervision of inmates in the county jail and related facilities.

c) AB 2346 (Dickerson), Chapter 185, Statutes of 2002, extended the same provisions of SB 1762 to deputy sheriffs in Kern, Humboldt, Imperial, Mendocino, Plumas, Santa Barbara, Siskiyou, Sonoma, Sutter, and Tehama Counties.

d) AB 1254 (La Malfa), Chapter 70, Statutes of 2003, and SB 570 (Chesbro), Chapter 710, Statutes of 2003, extended the same provisions of SB 1762 to deputy sheriffs in Shasta and Solano Counties.

e) AB 1931 (La Malfa), Chapter 516, Statutes of 2004, extended the same provisions of SB 1762 to deputy sheriffs in Butte County.

f) AB 272 (Matthews), Chapter 127, Statutes of 2005, extended the same provisions of SB 1762 to deputy sheriffs in Inyo, Merced, San Joaquin, and Tulare Counties.

g) AB 151 (Berryhill), Chapter 84, Statutes of 2007, extended the same provisions of SB 1762 to deputy sheriffs in Glenn, Lassen, and Stanislaus Counties.

h) AB 2215 (Berryhill), Chapter 15, Statutes of 2008, extended the same provisions of SB 1762 to deputy sheriffs in Lake, Calaveras, Mariposa, and San Benito Counties.

i) AB 1695 (Beall), Chapter 575, Statutes of 2010, allowed the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to duties performed at Santa Clara Valley Medical Center.

j) SB 1254 (La Malfa), Chapter 66, Statutes of 2012, provided peace officer status to deputy sheriffs in Trinity and Yuba Counties employed to provide custodial care and supervision of inmates in the county jail and related facilities.

k) AB 524 (Bigelow), of the 2019-2020 Legislative Session, was almost identical to this bill in that it added the counties of Mono and San Mateo to the list of counties that employs deputy sheriffs to perform custodial duties and are peace officers while performing those duties. AB 524 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association
County of San Mateo Board of Supervisors
Mono County Deputy Sheriffs Association (MCDSA)
Mono County Public Safety Officers Association (MCPSOA)
Mono County Sheriff's Office
Peace Officers Research Association of California
San Mateo County Board of Supervisors

Opposition

None

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

Date of Hearing: May 19, 2020
Counsel: David Billingsley

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

AB 3228 (Bonta) – As Amended May 7, 2020

SUMMARY: Requires private detention facilities to comply with the detention standards of care and confinement agreed upon in the facility's contract for operations. Establishes the California Detention Standards and Safety Working Group within the Office of the Inspector General (OIG) for the purpose of ensuring health, public safety, and humane standards in all detention facilities. Specifically, **this bill**:

1) Requires private detention facility operators to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations.

2) Defines "Detention facility" as "any facility in which persons are incarcerated or otherwise involuntarily confined for purposes of execution of a punitive sentence imposed by a court or detention pending a trial hearing or other judicial or administrative proceeding."

3) Defines "private detention facility" as "a detention facility that is operated by a private, nongovernmental, for-profit entity pursuant to a contract or agreement with a governmental entity."

4) Defines "Private detention facility operator" as "any private person, corporation, or business entity that operates a private detention facility."

5) Defines "Detention standards of care and confinement" as "any regulations, policies, or standards specified in the contract for services in the facility."

6) Defines "Tortious action" as "any act or willful misconduct that violates a duty of care, as specified."

7) Specifies that if a private detention facility operator or person acting on behalf of a detention facility operator, commits a an act resulting in damages because of civil liability, which violates the facilities contract, an individual, the Attorney General, or any district attorney or city attorney, may bring a civil action for injunctive and other appropriate equitable relief.

8) Provides that an action brought by the Attorney General, a district attorney, or a city attorney may also seek a civil penalty of up to $25,000.

9) States that the civil penalty shall be assessed individually against each person who is determined to have violated this section, and the penalty shall be awarded to each individual who has been injured under this section, as determined by the court.

10) Specifies that in civil actions brought pursuant to this bill, the court, in its discretion, may award the prevailing party reasonable attorney's fees and costs, including expert witness fees.

11) Establishes the California Detention Standards and Safety Working Group within OIG for the purpose of ensuring health, public safety, and humane standards in all detention facilities.

12) Requires OIG to convene the working group no later than January 31, 2021.

13) States that the working group shall include, but is not limited to, representatives of all of the following:

    a) The State Department of Public Health;

    b) The State Department of Social Services;

    c) The Attorney General; and

    d) Attorneys and advocates working directly with individuals in detention.

14) Permits the working group to also include representatives from any other relevant state agency.

15) Specifies that the working group shall provide recommendations to the Legislature with respect to ensuring health, public safety, and humane standards in all detention facilities in the California.

16) States that the working group shall provide its recommendations to the Legislature no later than 60 days from the date that the working group is first convened.

17) States that the requirement for submitting a report to the Legislature is inoperative on January 1, 2025.

EXISTING LAW:

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

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

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

4) Provides that notwithstanding the limitations on contracting with private prisons, CDCR may renew or extend a contract with a private, for-profit prison facility to provide housing for state prison inmates in order to comply with the requirements of any court-ordered

population cap. (Pen. Code, § 5003. 1, subd. (d).)

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

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

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

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

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

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

    a) The cost to operate at the capacity;

    b) Workforce impacts;

    c) Subpopulation and gender-specific housing needs;

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

    e) Public safety and rehabilitation; and,

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

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

12) States that until July 1, 2027, the Attorney General, shall engage in reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California, including any county, local, or

private locked detention facility in which an accompanied or unaccompanied minor is housed or detained.. (Gov. Code, § 12532, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Immigrant detention facilities operate under a subpar inspections regime, particularly when a private operator is involved. The lack of accountability with respect to oversight and conditions in these facilities is the result of an inadequate inspection and compliance scheme. Despite the fact that ICE sets specific conditions standards in their detention contracts, violations of these standards are routinely met with indifference, even when they result in death. With COVID-19 we can expect a dramatic spike in illness and death unless we act now to ensure that operators in our state comply with the standards set forth in their contracts. Through AB 3228, we will ensure that California requires that private operators be bound by the standards they agreed to in their contracts, and create a cause of action at the state level for violations of these contracts."

2) **Private Detention Facilities**: The federal government contracts with private detention facilities (and county jails) throughout the country to house immigration detainees and federal criminal pretrial detainees. California contracts with private detention facilities to house CDCR inmates because of prison overcrowding. There are a variety of concerns regarding the use of private detention facilities.

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

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

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

prohibition of the operation of a private detention facility to house immigration detainees. AB 32 provides limited exemptions to the prohibition on private prisons. The exemptions for CDCR include the need for CDCR to use private detention facilities to meet the federal cap on state prison population.

This bill would provide a cause of action against private detention facilities who fail to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations, and such failure causes civil damages. That cause of action could be pursued by an individual, the Attorney General, a district attorney, or a city attorney.

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

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

The Trump administration has sued California over a variety of laws the state has passed in recent years, including the California Values Act. Most, but not all, of the challenged laws have survived judicial scrutiny. The policy committee analyses regarding AB 32 contain discussions regarding potential legal challenges.

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

ICE has evaluated its detained population based upon the CDC's guidance for people who might be at higher risk for severe illness as a result of COVID-19 to determine whether continued detention was appropriate. Of this population, ICE has released nearly 700 individuals after evaluating their immigration history, criminal record, potential threat to public safety, flight risk, and national security concerns. This same methodology is currently being applied to other potentially vulnerable populations currently in custody and while making custody determinations for all new arrests. Additionally, ERO has limited the intake of new detainees being introduced into the ICE detention system. ICE's detained population has dropped by more than 4,000 individuals since March 1, 2020 with a more than 60 percent decrease in book-ins when compared to this time last year. (https://www.ice.gov/coronavirus)

Otay Mesa is a private detention facility in San Diego housing immigration detainees. As of May 7, 2020, the facility, which houses 649 detainees, had 140 confirmed Covid-19 cases.

The detention facility has not been accepting new detainees since April 2, 2020. (https://www.npr.org/sections/coronavirus-live-updates/2020/05/07/852475822/first-death-of-detainee-in-an-ice-detention-center-from-covid-19)

5) **Court-Ordered Limits on Prison Overcrowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (Coleman/Plata vs. Schwarzenegger (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (Brown v. Plata (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

   CDCR is currently in compliance with the three-judge panel's order on the prison population. CDCR's March 25, 2020 weekly report on the prison population notes that the in-state adult institution population is currently 114,167 inmates, which amounts to 134.2% of design capacity. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/03/Tpop1d200325.pdf) However, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, Coleman v. Brown, Plata v. Brown (2-10-14).

   As of March 25, 2020, there are 4,142 inmates under the jurisdiction of CDCR housed at in-state contract beds. 2,070 inmates are in "private, for-profit prison facilities" for purposes of the provisions described above. 2172 inmates are housed in California City Correctional Facility which is privately owned, but is leased and operated by CDCR. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/03/Tpop1d200325.pdf)

   The language of this bill is placed in the section of the Government Code which deals exclusively with limits on private detention centers and immigrant detainees. Although the focus of this bill seems to be private detention centers housing immigration detainees, language of the bill providing for a civil action would also apply to private detention centers housing CDCR prisoners.

6) **Scope and Purpose of Office of the Inspector General:** The OIG is responsible for contemporaneous oversight of the internal affairs investigations and the disciplinary process of CDCR, for conducting reviews of the delivery of medical care at each State institution, and for determining the qualifications of candidates submitted by the Governor for the position of warden. (https://www.oig.ca.gov) The OIG reports its reviews of policies, practices, and procedures of CDCR when requested by the Governor, the Senate, or the Assembly. When authorized by the Governor, State Assembly, or State Senate, conduct

reviews of CDCR policies, practices, and procedures and, upon completion, report back to the authorizing entity on the findings and recommendations resulting from the review;

OIG does not currently have any oversight responsibilities of private detention facilities that have contracted with the federal government to house immigration detainees. Existing law provides the California Attorney General, with the power to review private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings in California.

This bill would establish the California Detention Standards and Safety Working Group within the OIG for the purpose of ensuring health, public safety, and humane standards in all detention facilities. The working group would provide its recommendations to the Legislature. The bill does not limit the scope of the working group to private detention facilities, so presumably the recommendations would also include detention facilities operated by state or county government.

7) **Argument in Support**: According to the *Riverside Sheriffs' Association*, "This bill would ensure that all immigrant detention facilities in California operate under a consistent set of minimum standards in a manner that meets or exceeds the federal national standards. AB 3228 would also ensure that immigrant detention facilities do not engage in practices that harm detainees, including preventing harm, harassment, segregation and isolation.

"Importantly, AB 3228 would create a legal cause of action for the violations of detainee rights by the operators of these facilities. Although the for-profit incarceration industry has a deplorable record of operational failures and civil/human rights violations, it has occasionally demonstrated an interest in correcting some of these abuses when faced with significant financial liability stemming from civil litigation.

"Local, sworn law enforcement personnel have been repeatedly called in to re-establish security and order within these corporate-operated lock-ups. Many of the mass escapes and riots at these for-profit facilities were the result of the corporate mentality that routinely places profits before common-sense operational, safety and humane policies. Law enforcement officers have been routinely placed in harms way simply because these companies failed to properly run their facilities."

8) **Argument in Opposition**: According to the *California State Sheriffs' Association*, "Existing law establishes the Board of State and Community Corrections (BSCC), charges it with establishing minimum standards for local correctional facilities, and requires it to conduct at least biennial inspections of local detention facilities. The BSCC is also charged with developing recommendations for the improvement of criminal justice. In addition to the BSCC, many entities have direct or indirect oversight of county jails including elected sheriffs, the Attorney General, county grand juries, and the courts, to name a few.

"AB 3228 creates duplicative processes and in so doing, creates a working group that fails to specifically include the BSCC or jail or other correctional professionals in its membership. For these reasons, and those stated above, CSSA must respectfully oppose AB 3228."

9) **Related Legislation**:

a) AB 2598 (Bonta), would require, before a California law enforcement agency enters into or amends a Memorandum of Understanding (MOU) regarding the agency's participation on the Federal Joint Terrorism Task Force, that the agency submit the proposed MOU and any procedures relevant to the subject matter of the MOU to its governing body, or the Attorney General as appropriate, for approval. AB 2598 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 3181 (Bonta), would require any facility in the state that detains, confines, or holds an individual in custody to develop written policies and procedures to ensure persons detained have access to basic minimum standards with respect to due process and access to the court and to legal counsel and the minimum standards specified in state regulations. AB 3181 is awaiting hearing in the Assembly Public Safety Committee.

10) **Prior Legislation**:

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

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

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

d) SB 1289 (Lara), of the 2015-2016 Legislative Session, would have prohibited local governments and law enforcement from contracting with companies that operate for-profit immigration detention facilities, starting January 1, 2018, and requires these facilities to uphold national standards for humane treatment of detainees. SB 1289 was vetoed.

e) SB 843 (Committee on Budget), Chapter 43, Statutes of 2016, extended the authority of CDCR to contract with in-state, and out-of-state, for-profit prison through January 1, 2020.

f) SB 105 (Steinberg), Chapter 310, Statutes of 2013, authorized the state to act expeditiously in contracting with private and public entities to house inmates inside of California as well as outside of California. Sunset this authority January 1, 2017.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
Alianza Sacramento
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
American Friends Service Committee
Asian American Pacific Islander Christians for Social Justice (AAPI-CSJ)
Asian Prisoner Support Committee
Asylum Sponsorship Project
Bay Area Asylum Support Coalition (BAASC)
California Collaborative for Immigrant Justice
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Partnership
California Public Defenders Association
California Sanctuary Campaign
Campaign for Immigrant Detention Reform
Center for Empowering Refugees and Immigrants
Center for Gender & Refugee Studies
Central American Resource Center of San Francisco
Central Valley Immigrant Integration Collaborative
Centro Legal De LA Raza
Clergy and Laity United for Economic Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Communities United for Restorative Youth Justice (CURYJ)
Contra Costa Immigrant Rights Alliance
Council on American-islamic Relations, California
Desert Support for Asylum Seekers
Do No Harm Coalition
Dolores Street Community Services
Education and Leadership Foundation
Ensuring Opportunity Campaign to End Poverty in Contra Costa
Freedom for Immigrants
Ice Out of Marin
Immigrant Defense Advocates
Immigrant Legal Defense
Immigrant Legal Resource Center
Immigration Task Force
Indivisible Sausalito
Inland Coalition for Immigrant Justice
Jewish Action Norcal
Kehilla Community Synagogue
League of United Latin America Citizens
Legal Aid At Work
Long Beach Immigrant Rights Coalition
Mcgeorge School of Law Immigration Clinic
National Association of Social Workers, California Chapter
Nextgen California
Norcal Resist
North Bay Rapid Response Network: Napa, Solano and Sonoma Counties

Oasis Legal Services
Onejustice
Pacifica Social Justice
Pangea Legal Services
Pico California
Public Law Center
Rapid Response Network of Monterey
Resilience Orange County
Resource Generation
Riverside Sheriffs' Association
Sacramento Immigration Coalition
San Diego Immigrant Rights Consortium
San Francisco Public Defender
San Francisco Rapid Response Network
San Joaquin College of Law - New American Legal Clinic
Santa Cruz Barrios Unidos
Secure Justice
Shomeret Shalom Global Congregation
Siren: Services Immigrant Rights and Education Network
Stand Together Contra Costa
Step Up Sacramento
Tahirih Justice Center
The Multicultural Center of Marin
Usf Immigration and Deportation Defense Clinic
Vidas Legal Services and Comite
Wellstone Democratic Renewal Club

Oppose

California State Sheriffs' Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: May 19, 2020
Counsel: David Billingsley

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

AB 3052 (Carrillo) – As Amended May 11, 2020

SUMMARY: Establishes the Forced or Involuntary Sterilization Compensation Program to provide compensation to those who were forcibly sterilized under California's eugenic laws, as well as those sterilized without medical necessity or demonstrated informed consent while incarcerated. Specifically, **this bill**:

1) Makes Legislative findings and declarations about California's eugenics laws and sterilization program.

2) Establishes the Forced or Involuntary Sterilization Compensation Program to be administered by the California Victims Compensation Board (the board).

3) States that the purpose of the program is to provide compensation to any survivor of state-sponsored sterilization conducted pursuant to eugenic laws that existed in the State of California between 1909 and 1979.

4) Defines the following terms:

   a) "Board" means the California Victim Compensation Board;

   b) "Program" means the Forced or Involuntary Sterilization Compensation Program; and,

   c) "Qualified recipient" means:

      i) An individual who was sterilized pursuant to eugenics laws that existed in the State of California between 1909 and 1979; the individual was sterilized while he or she was a patient at a specified state institution; and the individual is alive as of January 1, 2020; or

      ii) An the individual who was sterilized while under the custody and control of the Department of Corrections and Rehabilitation (CDCR), county jail, or any other institution in which they were involuntarily confined or detained under a civil or criminal statute; the sterilization was not medically necessary to preserve the person's life or was not pursuant to a chemical sterilization program administered to convicted sex offenders; and the sterilization meets one of several other circumstances, including sterilization that was not medically necessary, or performed for purposes of birth control, or performed without demonstrated informed consent.

5) Requires CDCR to post notice of the program, qualifications, and claim process in all parole and probation offices, as well as in all state prison yards.

6) Requires the board to do all of the following to implement the program:

   a) Develop an outreach plan within six months of enactment, and conduct outreach to locate qualified recipients, as specified;

   b) Develop and implement procedures to review and process applications within six months of enactment;

   c) Review and verify all applications for victim compensation;

   d) Consult the eugenic sterilization database at the University of Michigan, and records of specified agencies, including the State Department of State Hospitals (DSH), the State Department of Developmental Services (DDS), CDCR, to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws or while under the custody of CDCR;

   e) Disclose coercive sterilizations that occurred in California prisons; and,

   f) Oversee an appeal process.

7) Requires DHS and DDS to share data with the board pertaining to individuals sterilized in state institutions.

8) Requires the board use a preponderance of the evidence standard to determine whether it is more likely than not that the applicant is a qualified recipient.

9) Prohibits the board from denying compensation to any claimant who is a qualified recipient.

10) Requires the board to keep confidential any record pertaining to either an individual's application for victim compensation or the board's verification of the application, but allows disclosure of aggregate claimant information.

11) Requires the board to annually submit a report to the Legislature that includes the number of applications submitted, the number of applications approved, the number of applications denied, and the number of claimants paid, the number of appeals submitted the result of those appeals, and the total amount paid in compensation. The report shall also include data on demographic information of the applicants, as well as data on outreach methods or processes used by the board to reach potential claimants.

12) States that these provisions shall become operative only upon an appropriation to the board, DSH, DDS, and CDCR for the purposes of implementing this chapter.

13) Requires the board to hold any appropriated funds in a separate account, and only those funds shall be used for the purpose of implementing the program.

14) States that an individual seeking compensation under the program shall submit an application to the board beginning six months after the start date of the program and no later than two years and six months after its start date.

15) Establishes a payment schedule for qualified applicants with initial payment within 60 days of approval and final payment after the filing window when all eligible applicants have been determined.

16) Allows a recipient to assign his or her compensation to a trust established for his or her benefit and to designate a beneficiary for his or her compensation.

17) Provides that a payment made to a qualified recipient shall not be considered taxable income for state tax purposes, or income or resources for determining eligibility for benefits or assistance under any state or local means-tested program; community property for the purpose of determining property rights, and exempts payments from collection from various kinds of debt, such as child support and court-ordered fines and fees.

EXISTING LAW:

1) States that a person sentenced to imprisonment in the state prison or in county jail is under the protection of the law, and any injury to the person not authorized by law is punishable in the same manner as if the inmate were not convicted or sentenced. (Pen. Code, § 2650.)

2) Makes it unlawful to use any cruel, corporal or unusual punishment in prisons, or to inflict any treatment or allow any lack of care which would injure or impair the health of the confined person. (Pen. Code, § 2652.)

3) Prohibits sterilization for the purpose of birth control of an individual under the control of the California Department of Corrections and Rehabilitation (CDCR) or a county correctional facility, except as specified. (Pen. Code, § 3440.)

4) Requires CDCR to only provide medical services for inmates which are based on medical necessity and supported by outcome data as effective medical care. (Cal. Code Regs., tit. 15, § 3350, subd. (a).)

5) Establishes the board to operate the California Victim Compensation Program. Also tasks the board with the administration of claims of erroneously convicted persons. (Gov. Code, § 13950 et seq. & Pen. Code, § 4900.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 3052 will rightfully compensate people who were involuntarily sterilized under California's previous eugenics law and in women's state prisons after 1979, by creating the Forced Sterilization Compensation Program."

2) **California's Eugenics Laws**: From 1909 to 1979, state law allowed the sterilization of people who had a "mental disease."

In an NPR interview, University of Michigan professor Alex Stern stated: "It's very important to take that terminology with many historic grains of salt. If we go back in time and look at what the terms meant, it often meant people who were not conforming to societal norms, people who were poor, people who lacked education, perhaps didn't speak sufficient English to make it through school, and so on.

"But what it meant for those who were enacting the law were people who were determined to have poor IQs, people with certain psychiatric disorders. But generally, often the way it was used was much more as a catch-all category - so people who just didn't fit, kind of like the misfits of society, so to speak. That's the way they looked at them.

"Looking back on it, I would say that those who were institutionalized - because many more people where institutionalized than actually sterilized - was because maybe they had a psychiatric condition and they were sent to an institution as was the policy at the time in the mid-20th century. ...

"But for the most part, this program of eugenics ... the idea of sterilization was to eradicate certain genes from the population." (NPR (2016) On A 'Eugenics Registry,' A Record of California's Thousands of Sterilizations.)

In recognition of this historic injustice, this bill would create an opportunity for California to compensate those who were subject to state-sponsored sterilization.

3) **Sterilization of Female Inmates**: As of 2014, sterilization of female inmates for purposes of birth control has been prohibited. (Pen. Code, § 3440.)

The Joint Legislative Audit Committee asked the California State Auditor to review female inmate sterilizations at CDCR facilities. The Auditor conducted an audit of female inmate sterilizations occurring between fiscal years 2005–06 and 2012–13. (See *Sterilization of Female Inmates, Some Inmates Were Sterilized Unlawfully, and Safeguards Designed to Limit Occurrences of the Procedure Failed*, June 2014, available at: https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf)

The Auditor's office mainly focused on bilateral tubal ligations, which is not a medically necessary procedure, and whose sole purpose is to sterilize a woman. The focus was not on other procedures, such as a hysterectomies, which are intended to treat cancer or address other health problems but which also result in sterilization. From fiscal year 2005–06 through 2012–13, data from the Receiver's Office show that 794 female inmates had various procedures that could have resulted in sterilization, out of those the Auditor determined that 144 of these inmates underwent a bilateral tubal ligation. (*Id.* at p. 13.)

State regulations impose certain requirements that must be met before such a procedure is performed. The Auditor found that the state entities responsible for providing medical care to these inmates— CDCR and the Receiver's Office—sometimes failed to ensure that inmates' consent for sterilization was lawfully obtained. (*Id.* at p. 19.)

This bill would allow such inmates to file a claim for compensation. It would also provide

the same recourse for female county inmates that were sterilized without proper consent.

4) **Argument in Support**: According to the *American Civil Liberties Union of California*, "Between 1909 and 1979, California was the most aggressive eugenics sterilizer in the nation, sterilizing 20,000 of 60,000 people nationally. The law explicitly targeted people with disabilities, and others who state institutions with broad discretion deemed unfit to reproduce. Although this law was repealed in 1979, a subsequent state audit revealed that an additional 144 women were sterilized during labor and delivery without required consent and authorization in California's women's prisons between 2006 and 2010. Research also indicates that there may be an additional 100 involuntary prison sterilizations dating back to the late 1990s. In 2003, the state acknowledged the historical wrong of California's past eugenics laws through a Senate resolution and apologies from Governor Davis and Attorney General Lockyer. With AB 3052, California will become the third state in the nation to compensate these survivors, following North Carolina (2013) and Virginia (2015).

   "AB 3052 affirms the human right of each individual to control their reproductive capacity without coercion or state interference, and respects the sacrifice of those affected by involuntary state-sterilization. AB 3052 advances reproductive and disability justice and dignity by providing vital acknowledgement of the harm endured by marginalized groups, such as disabled people, women, people of color, LGBTQ people, and low-income people in California."

5) **Prior Legislation**:

   a) AB 1764 (Carrillo), of the 2019-2020, would have established the Forced or Involuntary Sterilization Compensation Program to provide compensation to those who were forcibly sterilized under California's eugenic laws. AB 1764 was held on the Suspense File in the Assembly Appropriations Committee.

   b) SB 1190 (Skinner) of the 2017-2018 Legislative Session, would have established the Eugenics Sterilization Compensation Program to provide compensation for those who were forcibly sterilized under California's eugenic laws. SB 1190 was held in the Assembly Appropriations Committee.

   c) SB 1135 (Jackson), Chapter 558, Statutes of 2014, prohibits sterilization for the purpose of birth control of an individual under the control of the CDCR or a county correctional facility, and prohibits any means of sterilization of an inmate, except when required for the immediate preservation of life in an emergency medical situation or when medically necessary, as specified, and certain requirements are satisfied, including that a patient consents.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights Education and Defense Fund (Co-Sponsor)
A New Path
Access Women's Health Justice
Alliance for Humane Biotechnology

American Association of University Women - California
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
American Congress of Obstetricians & Gynecologists - District Ix
Asian Americans Advancing Justice - California
Association of Regional Center Agencies
CA Association of State Hospital Parent Councils for The Retarded
California Coalition for Women Prisoners
California Latinas for Reproductive Justice
California Nurse-midwives Association (UNREG)
California Pan - Ethnic Health Network
California Public Defenders Association
California United for A Responsible Budget (CURB)
Center for Genetics and Society
Center on Reproductive Rights and Justice (CRRJ)
Citizens for Choice
Coalition for Humane Immigrant Rights
Disability Rights California
Ella Baker Center for Human Rights
End Solitary Santa Cruz County
Fresno Barrios Unidos
Having Our Say Coalition
If/when/how: Lawyering for Reproductive Justice
Initiate Justice
Justice in Aging
Latino Coalition for A Healthy California
Naral Pro-choice California
National Association of Social Workers, California Chapter
National Health Law Program
Planned Parenthood Action Fund of The Pacific Southwest
Planned Parenthood Affiliates of California
State Council on Developmental Disabilities
The Women's Foundation of California
Urge: Unite for Reproductive & Gender Equity
Voices for Progress
Western Center on Law & Poverty, INC.
Women's Health Speicialists
Young Women's Freedom Center

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: May 19, 2020
Counsel: Cheryl Anderson

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

AB 2606 (Cervantes) – As Introduced February 20, 2020

SUMMARY: Requires each county probation department or other supervising county agency to update any supervised release file that is available to them on the California Law Enforcement Communications System (CLETS). Specifically, **this bill**:

1) Requires each county probation department or other supervising county agency to update any supervised release file that is available to them on CLETS every 10 days by entering any person placed onto postconviction supervision within their jurisdiction and under their authority, including persons on probation, mandatory supervision, and postrelease community supervision.

2) Makes other technical, non-substantive changes to the current statute.

EXISTING LAW:

1) Requires the Department of Justice to maintain a statewide telecommunications system for use by law enforcement agencies. Also requires the Attorney General, upon the advice of an advisory committee, to adopt policies, practices and procedures, and conditions of qualification for connection to the system -- CLETS. (Govt. Code, § 15150 et seq.)

2) Requires the Department of Justice, in conjunction with the Department of Corrections and Rehabilitation (CDCR), to update any supervised release file that is available to law enforcement on CLETS every 10 days to reflect the most recent inmates paroled from facilities under the jurisdiction of CDCR. (Pen. Code, § 14216, subd. (a).)

3) Requires that commencing on July 1, 2001, the Department of Justice, in consultation with the State Department of Mental Health, or its successor, the State Department of State Hospitals (DSH), must also update any supervised release file that is available to law enforcement on CLETS every 10 days to reflect patients undergoing community mental health treatment and supervision through the Forensic Conditional Release Program administered by the State Department of Mental Health, or its successor, the DSH, other than individuals committed as incompetent to stand trial, as specified. (Pen. Code, § 14216, subd. (b).)

4) Creates two classifications of felonies: those punishable in county jail and those punishable in state prison. Specifically, sentences to state prison are now mainly limited to registered sex offenders, individuals with current or prior serious or violent felony convictions, and individuals sentenced for specified aggravated theft. Additionally, a number of felonies have been specifically excluded from eligibility for local custody (i.e., the sentence must be served in state prison). (Pen. Code, § 1170, subds. (g) & (h).)

5) Provides for a period of post-prison supervision immediately following a period of incarceration in state prison. (Pen. Code, § 3000 et seq.)

6) Requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of CDCR (Pen. Code, § 3000.08, subds. (a) and (i).):

   a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);

   b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);

   c) A person serving a Three-Strikes sentence;

   d) A high-risk sex offender;

   e) A mentally disordered offender;

   f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which they are being released; and,

   g) A person subject to lifetime parole at the time of the commission of the offense for which they are being released.

7) Requires all other offenders released from prison on or after October 1, 2011, to be placed on post-release community supervision (PRCS) under the supervision of a county probation department. (Pen. Code, § 3000.08, subd. (b), 3451.)

8) States that, notwithstanding any other law, a person released from prison prior to October 1, 2011, is subject to parole under CDCR supervision. (Pen. Code, § 3000.09.)

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

10) Gives the court discretion in felony cases to grant eligible individuals probation for up to five years, or no longer than the maximum term that can be imposed when the maximum term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

11) Gives the court discretion in misdemeanor cases to grant probation for up to three years, or no longer than the maximum term that can be imposed when the maximum term exceeds three years. (Pen. Code, § 1203a.)

12) Authorizes a court, when sentencing a person to county jail for a felony, to commit the person to county jail for either the full term in custody, as specified, or to suspend the execution of a concluding portion of the term selected at the court's discretion. This period of

suspended execution is supervised by the county probation officer and is known as mandatory supervision. (Pen. Code, § 1170, subd. (h)(5).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Existing law requires the Department of Corrections and Rehabilitation and the Department of State Hospitals to update the Department of Justice every 10 days with information regarding offenders recently released from their facility under supervision. In an effort to provide law enforcement with more complete and accurate information about the supervised population, Assembly Bill 2606 would extend this requirement to county probation departments. If enacted, each county probation department must update the Department of Justice every 10 days about any newly released offenders under their supervision."

2) **CLETS**: CLETS is set forth in Government Code section 15150 et seq. (See *People v. Martinez* (2000) 22 Cal.4th 106, 1121-125 [describing history of various pertinent statutes].) It is "a statewide telecommunications system of communication for the use of law enforcement agencies." (Gov. Code, § 15152.) In establishing CLETS, the Legislature explained: "The maintenance of law and order is, and always has been, a primary function of government . . . . The state has an unmistakable responsibility to give full support to all public agencies of law enforcement. This responsibility includes the provision of an efficient law enforcement communications network available to all such agencies. It is the intent of the Legislature that such a network be established and maintained in a condition adequate to the needs of law enforcement...." (Gov. Code, § 15151; see *People v. Martinez* (2000) 22 Cal.4th 106, 124-125.)

3) **Changes to Supervision of Individuals Convicted of a Felony As a Result of the Criminal Justice Realignment Act of 2011 (Realignment):** Realignment made significant changes to supervision of individuals convicted of a felony. (Couzens & Bigelow, *Felony Sentencing after Realignment* (May 2017) < http://www.courts.ca.gov/partners/documents/felony_sentencing.pdf > [as of March 23, 2020].)

   Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. Realignment shifted the supervision of some released prison inmates from CDCR parole agents to county probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony or specified aggravated theft; who are serving a Three Strike sentence; who are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who are subject to lifetime parole. (Pen. Code, §§ 3000.08, subds. (a) and (i), and 3451, subd. (b).) All other inmates released from prison on or after October 1, 2011 are subject to PRCS by the county probation department as opposed to state prison. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

   Realignment also created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison,

thus requiring that more felons serve their sentences in county jails. The new law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have be specifically excluded from eligibility for local custody (i.e., the sentence for which must be served in state prison). (Pen. Code, § 1170, subd. (h); Couzens & Bigelow, *supra*, *Felony Sentencing after Realignment*.)

Under realignment, the sentencing judge has discretion to impose two types of sentences to county jail. (Pen. Code, § 1170, subd. (h)(5).) The court may, when appropriate in the interests of justice, commit the defendant to county jail for the straight term allowed by law. (Pen. Code, § 1170, subd. (h)(5)(A).) With this alternative, the defendant will serve the computed term in custody, less conduct credits, then be released without restriction. With the second alternative, the court may send the defendant to county jail for the computed term, but suspend a concluding portion of the term. (Pen. Code, § 1170, subd. (h)(5)(B).) These sentences are called "split" sentences because they generally are composed of a mixture of custody and mandatory supervision time. Mandatory supervision is the period of time in a split sentence when a person is under required supervision of a county probation department following a period of incarceration. (Couzens & Bigelow, *supra*, *Felony Sentencing after Realignment*.)

Despite the fact that county probation offices are responsible for monitoring individuals serving split sentences who are on mandatory supervision, that period of time is not considered probation. Rather, probation is when the court suspends imposition or execution of sentence and conditionally releases the individual into the community under the supervision of a county probation department. (Pen. Code, §§ 1203, subd. (a), 1203a, 1203.1.)

4) **Update of Supervised Release File on CLETS**: Under current law, the Department of Justice in conjunction with CDCR must update supervised release files on CLETS every 10 days to show recent inmates paroled from facilities under its jurisdiction. (Pen. Code, § 14216, subd. (a).) The Department of Justice has a similar duty in conjunction with the SDSH to update these records to show patients undergoing community health treatment and supervision through the conditional release program administered by SDSH. (Pen. Code, § 14216, subd. (b); <https://www.dsh.ca.gov/Treatment/Conditional_Release.html> [as of March 14, 2020].)

Under current law, there is no similar requirement to update CLETS with information regarding individuals who have been released under county supervision following conviction of a felony offense. As discussed *ante*, in 2011, realignment shifted the responsibility for managing and supervising individuals convicted of many felony offenses from the state to the county government. This bill would require those supervising county probation departments or county agencies to also update CLETS every 10 days as to persons who have been placed onto postconviction supervision within their jurisdiction. This bill would also extend the updating requirement to include misdemeanants under postconviction, county supervision. (Pen. Code, §§ 1203.1, 1203a.)

5) **Need for this Bill**: According to information provided by the author's office, the current reporting "requirement is not extended to county probation departments, even though far more offenders are supervised under county probation than offenders supervised by CDCR or DSH. This lack of complete information on the supervised population hampers law enforcement collaboration across the state, as well as the implementation of several policy changes recently enacted by the Legislature and the voters of California."

   For example, SB 384 (Wiener), Chapter 541, Statutes of 2017, prohibits sex offender registrants who are under any form of supervision from petitioning for termination from the registry. (Pen. Code, § 290.5 [effective July 1, 2021].) AB 1076 (Ting) Chapter 578, Statutes of 2019, requires the DOJ to grant automatic conviction record relief if the person does not have an active record for local, state, or federal supervision in the supervised release file. (Pen. Code, § 1203.425, subd. (a).) According to information provided by the Attorney General's Office, complete information of all individuals on supervision is required when making decisions about terminating individuals from the sex offender registry or automatically granting conviction relief. Currently not all counties report all supervision types, since they are not required to report.

6) **Argument in Support**: According to the State of California, Department of Justice: "This bill would require each county probation department or other supervising agency to update every 10 days any supervised release file (SRF) that is available to them on the California Law Enforcement Telecommunications System (CLETS) by entering into CLETS any person placed onto postconviction supervision within their jurisdiction. This would include persons on probation, mandatory supervision, and post-release community supervision (PRCS).

   "Currently, only the Department of Corrections and Rehabilitation and the Department of State Hospitals are required to update the SRF every 10 days. These updates inform law enforcement who the most recent inmates paroled from facilities under their jurisdiction are and which patients are undergoing community mental health treatment and supervision through the Forensic Conditional Release Program.

   "County supervising agencies that monitor the most recent offenders who are on probation, mandatory supervision, and PRCS are not required to update the SRF. As a result, this information is often incomplete and not available to law enforcement. Requiring the SRF to contain complete information will assist county probation departments and law enforcement agencies to track and monitor those on supervision and protect their local communities. In addition, this bill would allow DOJ and criminal justice agencies to make accurate critical decisions related to SB 384 Tiered Sex Offender Registry (Chapter 541, Statutes of 2017) and AB 1076 Criminal Records Automatic Relief (Chapter 578, Statutes of 2019)."

7) **Prior Legislation**:

   a) AB 1076 (Ting), Chapter 578, Statutes of 2019, required the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a monthly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and required the DOJ to grant that relief to the eligible person without a petition or motion being filed on the person's behalf.

b) AB 1747 (Gonzalez), Chapter 789, Statutes of 2019, limits the use of the state's telecommunications system containing criminal history information for immigration enforcement purposes, as defined, and for purposes of investigating immigration crimes solely because criminal history includes a violation of federal immigration law, as specified.

c) SB 384 (Wiener), Chapter 541, Statutes of 2017, created a tiered registry for sex offenses, operative January 1, 2021, so that people are required to register for 10 years, 20 years, or lifetime depending on the conviction offense.

d) AB 1470 (Budget Committee), Chapter 24, Statutes of 2012, changed, in order to eliminate the Department of Mental Health and create the Department of State Hospitals, the name "Department of Mental Health" to "Department of State Hospitals."

e) SB 2018 (Schiff), Chapter 420, Statutes of 2000, required, beginning July 1, 2001, the Department of Justice in consultation with the Department of Mental Health, to update every 10 days information systems data on persons released under the Forensic Conditional Release Program.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice
California Police Chiefs Association
Crime Victims United of California

Opposition

None

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

Date of Hearing: May 19, 2020
Counsel: Cheryl Anderson

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

AB 2808 (Cervantes) – As Amended May 5, 2020

SUMMARY: Provides that expungement of a criminal conviction does not release the defendant from any unexpired criminal protective order. Specifically, **this bill**:

1) States that dismissal of an accusation or information following successful completion of probation does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying case. The protective order shall remain in full force and effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

2) States that dismissal of an accusation or information following full compliance with a non-probation sentence does not release the defendant from the terms and conditions of any unexpired criminal protective order that has been issued by the court in connection with the underlying case. The protective order shall remain in full effect until its expiration, or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

3) Makes other technical, non-substantive changes to the existing statutes.

EXISTING LAW:

1) Requires a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation and the petitioner successfully completed probation or terminated early, is not serving a sentence for, on probation for, or charged with the commission of any offense. The court has discretion to do so in the interests of justice in other probation cases. (Pen. Code, § 1203.4, subds. (a) & (b).)

2) Specifies that expungement relief for convictions in which probation was granted releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.4, subd. (a)(1)-(3)):

   a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

   b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and

d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

3) Requires the court to grant expungement relief, with specified exceptions, to defendants convicted of a misdemeanor and not granted probation or an infraction after one year from the date of the pronouncement of judgement, if the defendant has fully complied with and performed the sentence, is not serving a sentence, is not charged with a crime, has lived an honest and upright life, and has conformed to and obeyed the law. If the defendant does not satisfy these requirements, the court may in its discretion and in the interests of justice after one year from the date of pronouncement of judgment grant relief in non-probation cases in which the defendant has fully complied with and performed the sentence, is not serving a sentence, and is not charged with a crime. (Pen. Code, § 1203.4a subds. (a) & (b).)

4) Specifies that expungement relief for infraction/misdemeanor non-probation cases releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.4a, subds. (a) & (c)):

a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

b) May not possess or own or have under his or her custody or control any firearm Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

c) Is not relieved of any ban on holding public office; and

d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

5) Allows the court to grant expungement relief for a felony conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied. (Pen. Code, § 1203.41.)

6) Specifies that expungement relief for county jail felony convictions releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.41, subds. (a) & (b)):

a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and

d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

7) Allows the court to grant expungement relief for a conviction of a petitioner sentenced to prison for a felony that, if committed after enactment of Criminal Justice Realignment legislation in 2011, would have been eligible for county-jail sentencing to obtain an expungement. (Pen. Code, § 1203.42.)

8) Specifies that expungement relief for a conviction which would have been a county jail felony if committed after realignment releases the person from the penalties and disabilities resulting from the conviction, except the person (Pen. Code, § 1203.42, subds. (a) & (b)):

a) May have a prior conviction pleaded and proved if the person is subsequently prosecuted for another crime;

b) Is not relieved of any prohibition on possessing, owning, or having under his or her custody or control any firearm and may be convicted as an ex-offender in possession of a firearm;

c) Must disclose the conviction in response to any direct question in a questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery; moreover, any ban on holding public office that resulted from the conviction remains in effect; and

d) May have their driver's license revoked, suspended, or use limited after two or more Vehicle Code convictions.

9) Allows the court to grant expungement relief to probationer's whose criminal record resulted from a mental disorder stemming from military service, with specified exceptions and if specified conditions are met. (Pen. Code, 1170.9, subd. (h).)

10) Allows the court to grant expungement relief for a conviction of solicitation or prostitution, if the petitioner has completed a term of probation and can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking. The court may grant the same expungement relief as in other expunged probation cases. (Pen. Code, § 1203.49.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under existing law, criminal defendants may be released from many 'penalties and disabilities' after completing probation and having

the case against them dismissed. However, there is ambiguity in the law whether these defendants are also released from the terms of existing protective orders against them.

"Assembly Bill 2808 will resolve this ambiguity and help protect survivors of domestic violence or certain sex crimes. The bill provides clarification that completing probation and having a case against a defendant dismissed does not release a defendant from having to comply with an existing protective order. This will allow survivors to continue to be safeguarded by an existing protective order, and be able to rely on that order, regardless of what may happen to the criminal case against the defendant who assailed them."

2) **Expungement Relief in General**: Originally, expungement relief was available to defendants placed on probation. (Pen. Code, § 1203.4.) However, expungement relief has been extended to other categories of cases, including people convicted of misdemeanors and infractions who were not granted probation. (Pen. Code, § 1203.4a.) After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail. (Pen. Code, § 1203.41.) In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment. (Pen. Code, § 1203.42.) There are also specific provisions providing expungement relief to probationers who were victims of human trafficking (Pen. Code, § 1203.49) or whose criminal record resulted from a mental disorder stemming from military service (Pen. Code, § 1170.9, subd. (h).)

When a conviction is expunged, the person is generally released from "all penalties and disabilities" resulting from the conviction. (Pen. Code, §§ 1203.4, subd. (a), 1203.4a(a), 1203.41, subd. (a), 1203.42, subd. (a), 1203.49, 1170.9, subd. (h).) However, there are a number of exceptions, including several statutory exceptions to that release – e.g., gun possession and holding elected office. (Pen. Code, §§ 1203.4, subds. (a) & (c), 1203.4a, subd. (a), 1203.41, subds. (a) & (b), 1203.42, subd. (b), 1203.49, 1170.9, subd. (h)(4).) As explained:

> . . . The power of the court to reward a convicted defendant who satisfactorily completes his period of probation by setting aside the verdict and dismissing the action operates to mitigate his punishment by restoring certain rights and removing certain disabilities. But it cannot be assumed that the legislature intended that such action by the trial court under section 1203.4 should be considered as obliterating the fact that the defendant had been finally adjudged guilty of a crime. . . .

(*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 140.) "Therefore, a conviction which has been expunged still exists for limited purposes...." (*Ibid.)*

This bill would codify an additional exception to release from "all penalties and disabilities," as provided under Penal Code sections 1202.4 and 1202.4a. In particular, it would specify that expungement under these provisions does not release a person from an unexpired criminal protective order.

3) **Need for this Bill**: Penal Code section 273.5, subdivision (j) provides that upon conviction for willful infliction of corporal injury upon a cohabitant (otherwise known as domestic

violence), the sentencing court must consider issuing a postconviction restraining order for up to 10 years prohibiting any contact with the victim. (Pen. Code, § 273.5, subds. (a)-(d), (j).) Penal Code section 136.2, subdivision (i) authorizes a court to issue a postconviction protective order for up to 10 years if a defendant is convicted of a domestic violence offense and the protected person qualifies as a victim. (See *People v. Beckemeyer* (2015) 238 Cal.App.4th 461, 465-466.)

According to background information provided by the author's office: "Existing law, specifically Penal Code Section 136.2, also allows a protective order against a defendant who was convicted of domestic violence or certain sex crimes to remain in place for up to 10 years. This allowance is made regardless of the nature of the sentence served by the defendant, such as whether they served probation or time in state prison. [¶] These contradictions leave California courts without robust guidance regarding how to deal with protective orders after a defendant has had a case against them dismissed once they've completed probation."

This bill would codify that when a felony or misdemeanor conviction is dismissed/expunged after probation is successfully completed (Pen. Code, § 1203), and when an infraction or misdemeanor is dismissed/expunged after a non-probation sentence is completely fulfilled (Pen. Code, § 1203.4a), the defendant is not released from an unexpired criminal protective order. The court, however, retains discretion to terminate or modify the order.

(4) **Argument in Support**: According to the *Los Angeles County District Attorney's Office*, the sponsor of this bill, "AB 2808 would amend Penal Code sections 1203.4 and 1203.4a to specify that dismissal of a case under those sections would not relieve a defendant from the terms and conditions of an unexpired criminal protective order issued in the case. Penal Code section 1203.4 allows a defendant to have his or her case dismissed after successful completion of probation, and Penal Code section 1203.4a, allows a defendant convicted of a misdemeanor or infraction without a probationary sentence to have his or her case dismissed after completion of the mandates of the sentence. However, both statutes are silent on the viability of protective orders issued in cases such as domestic violence and stalking after a case has been dismissed pursuant to these sections.

"Under existing law, a defendant whose case has been dismissed pursuant to Penal Code sections 1203.4 and 1203.4a, shall be "released from all penalties and disabilities resulting from the offense." Although there are no cases directly on point, several appellate courts have held that in other contexts, provisions designed to protect the public are not "penalties and disabilities" from which a defendant may be released. For example, in *People v. Hamdon* (2014) 225 Cal. App.4th 1065, the court held that a defendant must still register as a sex offender per PC 290.5 even if the conviction had been set aside per PC 1203.4a. The court relied on two CA Supreme Court cases which held that registration is not punitive. Similarly, several CA Court of Appeal decisions have established that the "penalties and disabilities" from which a probationer may be released do not include non-penal restrictions designed to protect the public, such as qualification for employment as a peace officer and licensing of attorneys and doctors.

"Additionally, both Penal Code sections 1203.4 and 1203.4a clearly state that dismissed cases do not exempt the defendant from firearms prohibitions or prohibitions to hold public

office resulting from the original conviction. However, the lack of mention of protective orders has created uncertainty around their future enforceability.

"Criminal protective orders are not punitive in nature. They are non-penal restrictions designed to protect crime victims. Unless Penal Code sections 1203.4 and 1203.4a are amended to exclude criminal protective orders from the "penalties and disabilities" provision of that section, there will always be vagueness in the law as to whether protective orders are still valid after a case has been dismissed.

"AB 2808 preserves judicial discretion to terminate or modify a criminal protective order while clarifying that a dismissal of a case under 1203.4 or 1203.4a does not automatically mandate a dismissal of a validly issued, unexpired protective order in the case. In essence, AB 2808 seeks to clarify the vagueness in the existing laws."

4) **Argument in Opposition**: According to the *California Public Defender's Association*, "Although well intentioned, broadly upending established rules of criminal procedure to protect victims of a number of serious felonies when narrowly tailoring such provisions would adequately protect the individuals at risk, wreaks havoc both on our long established criminal law and the state's budget which is already reeling from the economic devastation of the COVID-19 pandemic.

"AB 2808 could address these convictions for serious offenses by amending Penal Code section 1203.4(a) to add the below:

> "(4) *...that has been issued by the court pursuant to Penal Code sections 136.2(h)(2)(i)(1) or 646.9 (k)(1) in connection with a felony violation of domestic violence as defined in Penal Code section 13700 or Family Code 6211 or a felony violation of Penal Code sections 236.1, 261, 261.5, 262, 266h(a), 266i(a), 186.22 or a felony violation requiring registration pursuant to Penal Code section 290....*

"Similarly, Penal Code section 1203.4(a)(c)(4) could be tailored to address these serious crimes.

"AB 2808, unless amended, would violate long established rules of criminal procedure. AB 2808 would attempt to extend a judge's jurisdiction in a criminal case beyond the time of dismissal, when jurisdiction legally ends, to allow modification of a criminal protective order after a case has been dismissed. These proposed modifications of the dismissal statutes in Penal Code sections 1203.4 and 1203.4(a) would violate criminal procedure in other statutes. Once a case is dismissed, a judge cannot reopen a case to change terms. Defendants should be allowed to rely upon a past dismissal, to move forward with employment and relationships to full rehabilitation.

"AB 2808, as written, is unnecessary for two main reasons. If a judge wants to continue to enforce a criminal protective order, the judge can simply choose not to terminate probation and dismiss the case early. For instance, if a violation of the criminal protective order occurred in the past, it is unlikely that a judge would grant an early release from probation, as the early termination of probation and dismissal ends the judge's jurisdiction over the case. Secondly, a person who wants a restraining order against a defendant or any other person in society has the option to seek a civil restraining order. The end of criminal jurisdiction in a

criminal case does not limit any aggrieved person from seeking this readily available remedy in civil court.

"AB 2808 wastes scarce resources in the midst of a pandemic and resulting economic crisis. As currently written, every stay away order in every misdemeanor case would remain in police computers requiring the police to give precedence to responding to these orders over other kinds of police priorities. In many counties, protective orders are routinely issued in every shoplifting, prostitution, vandalism and battery case. These are all misdemeanors. Most of these cases do not involve people who have a familial or other relationship; in fact, many are strangers. For people who do have some kind of on-going relationship, they assume that the order no longer applies when probation is over.

"AB 2808 is bad public policy. We have learned that once individuals have served their debt to society for a past crime, allowing them to re-integrate into society makes the community safer and is cost-effective. Instead of narrowly tailoring the language to protect the victims of serious crimes, AB 2808 uses a hammer to smash the provisions of the criminal justice system."

5) **Related Legislation**:

a) AB 3061 (Cooper), of the 2019-2020 Legislative Session, would make technical, non-substantive changes to Penal Code section 1203.4 which authorizes dismissal of an accusatory pleading following successful completion of probation. AB 3061 was read for the first time in the Assembly on February 24, 2020.

6) **Prior Legislation**:

a) AB 1115 (Jones-Sawyer), Chapter 207, Statutes of 2017, allowed a court to grant expungement relief to a defendant sentenced to state prison for a felony that, if committed prior to criminal justice realignment, would have been eligible for sentencing to a county jail, as specified.

b) AB 2438 (Ting), of the 2017-2018 Legislative Session, would have required the court to automatically expunge a conviction after a defendant had completed probation or fully complied with the sentence of the court. AB 2438 was held under submission in the Assembly Committee on Appropriations.

c) AB 651 (Bradford), Chapter 787, Statutes of 2013, allowed a court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment, as specified.

d) AB 2371 (Butler), Chapter 403, Statutes of 2012, authorized a court to grant restorative relief to a veteran that meets specified criteria and partial expungement relief.

e) AB 2040 (Swanson), Chapter 197, Statutes of 2012, allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she had not been subsequently convicted or that he or she had been rehabilitated.

f) AB 2263 (Bradford), of the 2011-2012 Legislative Session, would have authorized a person who was sentenced for a jail felony to apply for dismissal of his or her conviction and the underlying charge. AB 2263 was held on the Senate Committee on Appropriations suspense file.

g) AB 1384 (Bradford), Chapter 284, Statutes of 2011, allows a court to grant expungement relief to a defendant who has been convicted of an infraction or misdemeanor but not granted probation.

h) AB 2068 (Hill), of the 2009-10 Legislative Session, would have authorized the court, in its discretion and in the interest of justice, to afford a defendant expungement from a former misdemeanor conviction in cases where probation was not granted. AB 2068 was vetoed.

i) AB 2582 (Adams) Chapter 99, Statutes of 2010, authorized the court to expunge a former conviction for a non-vehicular infraction.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
Alameda County District Attorney's Office
California District Attorneys Association
California Police Chiefs Association
Crime Victims United of California
Peace Officers Research Association of California (PORAC)

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California Public Defenders Association
Re:store Justice
San Francisco Public Defender

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

Date of Hearing: May 19, 2020
Chief Counsel: Gregory Pagan

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

AB 2847 (Chiu) – As Amended May 7, 2020

SUMMARY: Requires commencing July 1, 2022 all semiautomatic pistols not already listed on the Department of Justice (DOJ) roster of not unsafe handguns be equipped with chamber load indicators, magazine disconnect mechanisms, and microstamping technology. Specifically, **this bill**:

1) Requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in one or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

2) Requires commencing July 1, 2022 for all semiautomatic pistols that are not already listed on the DOJ roster of not unsafe handguns be equipped with a chamber load indicator and a magazine disconnect mechanism if it has a detachable magazine.

3) Provides that the DOJ shall, for each newly added semiautomatic pistol added to the roster of not unsafe handguns, remove from the roster exactly three semiautomatic pistols lacking a chamber load indicator, magazine disconnect mechanism, or microstamping technology. Each semiautomatic pistol removed from the roster shall be considered an unsafe handgun. The Attorney General (AG) shall remove semiautomatic pistols from the roster in reverse order of their date of addition to the roster.

4) Contains numerous Legislative findings and declarations.

EXISTING LAW:

1) Requires commencing January 1, 2010 for all semiautomatic pistols that are not already listed on the roster of not unsafe handguns, be designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the DOJ certifies that the technology is available to more than one manufacturer unencumbered by any patent restrictions. (Pen. Code, § 31910, subd. (b)(7)(A).)

2) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).) Specifies that this section shall not

apply to any of the following:

a) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the DOJ to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this;

b) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section;

c) Firearms listed as curios or relics, as defined in federal law; and,

d) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

3) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

4) Defines "unsafe handgun" as "any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified." (Pen. Code, § 31910.)

5) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

6) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)

7) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in

California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)

8) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)

9) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:

   a) The manufacturer petitions the AG for reinstatement of the handgun model;

   b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;

   c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;

   d) The three handguns samples shall only be tested once. If the sample fails it may not be retested;

   e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;

   f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,

   g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subds. (a)-(g).)

10) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:

   a) Finish, including, but not limited to bluing, chrome plating or engraving;

   b) The material from which the grips are made;

   c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm; and,

   d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)

11) Requires any manufacturer seeking to have a firearm listed as being similar to an already listed firearm to provide the DOJ with the following::

    a) The model designation of the listed firearm; and

    b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;

c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill strengthens California's Unsafe Handgun Act (UHA) to ensure that new firearms are introduced that incorporate microstamping technology and comply with the UHA's other safety requirements.

   "AB 2847 eases compliance by requiring that newly developed semiautomatic pistol models etch microstamping characters on one place on the interior of the firearm, as opposed to two as currently required. Additionally, AB 2847 furthers implementation of the new UHA requirements by directing the Attorney General to remove three previously grandfathered handgun models from the roster for each new compliant handgun model that is introduced.

   "Microstamping technology will significantly improve law enforcement's ability to identify shooters and gun traffickers, apprehend them before they do more harm, and hold them accountable. Incorporating other UHA design safety standards in more handguns sold in California would also help prevent accidental shootings."

2) **Attorney General Certification**: AB 1471 (Feuer), Chapter 573, Statutes of 2007, required, effective January 1, 2010, semiautomatic pistols not already designated as a safe handgun, to be equipped with microscopic identifying markings which are transferred to each cartridge case when the firearm is fired in order for the firearm to be placed on the roster of not unsafe handguns. The implementation of AB 1471 was delayed until the AG certified that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.

   On May 17, 2013, the DOJ certified the microstamping technology required by AB 1471 (2013-BOF-03). The DOJ stated, "The purpose of this bulletin is to inform California licensed firearms dealers, California DOJ certified laboratories, firearm manufacturers with firearms listed on the Roster of Handguns Certified for Sale in California, and all other interested persons/entities of the DOJ's certification on May 17, 2013 pursuant to Penal Code Section 31910, subd. (b)(7)(A) that the microstamping technology is available to more than one manufacturer unencumbered by any patent restrictions."

3) **Removal of Firearms from the DOJ Roster of "Not Unsafe" Handguns**: This bill requires that commencing July 1, 2022, semiautomatic handguns must be equipped with microstamping technology, chamber load indicators, and magazine disconnect mechanisms in order to be listed on the DOJ roster of "not unsafe" handguns that can lawfully be sold in the State. However, for each new model added to the roster, the DOJ will be required to remove from the roster three semiautomatic pistol that lacks one or more of the above features in reverse order of their addition to the roster. This would appear to be a disincentive for firearms manufacturers to add new models to the roster because three other semiautomatic pistols that they manufacture, currently considered not unsafe, would be removed. Will manufacturers add new models with the required features?

4) **Argument in Support**: *Brady United Against Gun Violence* states, "The gun industry has acknowledged that microstamping is entirely feasible, but has maintained that it is not possible to microstamp two separate places on the interior of the firearm as is the current mandate under the Unsafe Handgun Act (UHA). Although it is entirely practicable to have two engravings, it is not necessary. One engraving on the firing pin of a firearm reliable provides law enforcement the available and necessary information concerning the gun. AB 2847 therefore eases this requirement by mandating that newly developed semiautomatic pistol models engrave microstamping characters on just one place on the interior of the firearm, the firing pin, as opposed to two. Gun manufactures can easily and affordably comply with this mandate as well as the other important UHA quality and safety standards.

   "Additionally, AB 2847 furthers implementation of the UHA requirements by directing the Attorney General to remove three previously grandfathered handgun models from the roster of certified handguns that may be manufactured and sold in California, for each new compliant handgun model that is introduced. This will guarantee a progressive movement towards ensuring that one day all firearms in California will be in compliance with the important and life-saving standards outlined in the UHA.

   "In short, the microstamping mandate in AB 2847 will significantly improve law enforcement's ability to identify shooters and gun traffickers, apprehend them before they do more harm, and hold them accountable. Also, AB 2847 will ensure that more, and eventually all, handguns sold in CA will comply with the other important UHA design safety standards on a rolling basis. These standards work to prevent unintentional shootings and will protect California consumers."

5) **Argument in Opposition**: The *California Sportsman's Lobby* argues, "AB 2847 would substantially reduce the number of 'not unsafe' pistols presently available to California sportsmen to buy, is opposed by the California Sportsman's Lobby.

   "It would do so, commencing July 1, 2022, by requiring that new pistols added to the states, 'not unsafe' handgun roster possess microstamping technology in centerfire pistols that would imprint the make, model, and serial number in one place on empty cartridge casings from ammunition discharged from the pistol; a chamber load indicator for centerfire semiautomatic pistols; and, a magazine disconnect feature that would prevent discharge of the firearm if its detachable magazine is removed for both centerfire and rimfire semiautomatic pistols.

   "The bill would require the removal of three models of semiautomatic pistols now on the

roster of 'not unsafe' handguns if they lack one or more of the above features each time a new model is added.

"The models currently on the roster are popular, not unsafe, and should continue to be available to sportsmen and other lawful individuals regardless of whether new models are added. If the new models that comply with the requirements of AB 2847 are added to the roster, the current list of pistols that sportsmen and others can buy will eventually be reduced by two-thirds, even though such models are not unsafe."

6) **Prior Legislation**: AB 2733 (Harper), of the 2017-2018 Legislative Session, would have deleted the requirement that firearms be manufactured with micro-stamping technology that leaves an imprint on each cartridge case when the firearm is fired. AB 2733 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady United Against Gun Violence- Oakland/alameda County
Cleveland School Remembers-brady Campaign to Prevent Gun Violence Chapter
Coalition Against Gun Violence, a Santa Barbara County Coalition
Coalition to Stop Gun Violence
Friends Committee on Legislation of California
Giffords Law Center to Prevent Gun Violence
Jewish Center for Justice
Los Angeles City Attorney
March for Our Lives California
Neveragain,ca
San Diego Chapter - Brady United Against Gun Violence
San Francisco Chapter - Brady United Against Gun Violence
Santa Clara County District Attorney's Office
St. Paul's Cathedral, San Diego
The Violence Prevention Coalition of Orange County
United Nations Association of The USA - San Diego Chapter
Youth Alive!

Oppose

California Rifle and Pistol Association, INC.
California Sportsman's Lobby, INC.
Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)
Safari Club International - California Chapters
San Bernardino County Safety Employees' Benefit Association

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

Date of Hearing: May 19, 2020
Chief Counsel: Gregory Pagan

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

AB 2236 (Gabriel) – As Amended May 7, 2020

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to develop a peace officer in-service hate crimes refresher course to be taken every five years, as specified. Specifically, **this bill**:

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

2) Commencing on January 1, 2024, POST shall require the above refresher course to be taken every five years by each peace officer below the rank of supervisor who is assigned to patrol duties.

EXISTING LAW:

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

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

   a) Indicators of hate crime;

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

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

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

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

   f) Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes in whole or

in part because of the victim's actual or perceived homelessness;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, " Studies show that hate crimes are on the rise throughout California and United States, especially against the Jewish, LGBTQ, black and Latino communities. The State Auditor found that law enforcement agencies have not adequately identified, reported, or responded to hate crimes. AB 2236 strengthens existing requirements for peace officers to undergo comprehensive hate crime training so they can properly identify hate crimes."

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

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

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

4) **Hate Crime Reporting in California**: According to the DOJ's 2016 report, Hate Crimes in California, the total number of hate crime events (an occurrence when a hate crime is involved) decreased 34.7 percent from 2007 to 2016. Filed hate crime complaints decreased 30.5 percent from 2006 to 2015. That being said, hate crime events in California have been

on the rise; there was a 10.4 percent rise from 2014 to 2015, and then another 11.2 percent rise from 2015 to 2016. The total number of hate crime events, offenses, victims, and suspects had all increased in 2016.

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

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

5) **Argument in Support**: According to the Jewish Public Affairs Committee of California, "In 2018, the California State Auditor released a report with the key finding that law enforcement agencies have not adequately identified, reported, or responded to hate crimes. The audit found the four surveyed law enforcement agencies failed to report a total of 97 hate crimes to the Department of Justice (DOJ), or 14 percent of the hate crimes identified. In addition, the audit found that the DOJ should provide more guidance to assist law enforcement agencies with the identification and investigation of hate crimes and outreach to vulnerable communities. Among other findings, the audit concluded that 'law enforcement agencies' inadequate policies and the DOJ's lack of oversight have resulted in the underreporting of hate crimes in the DOJ's Hate Crime Database.'

"The Center for the Study of Hate and Extremism at California State University, San Bernardino in a 2018 study showed a steady rise of hate crimes in California's largest cities in the last four years. This study reports the research published by many civil liberty groups and law enforcement agencies highlighting the need for immediate action by the Legislature. In addition, according to the Los Angeles Police Department, hate crimes have steadily increased in the city, rising from 40% from 229 reported acts in 2016 to 332 in 2019."

6) **Prior Legislation**: AB 1052 (Chu) of the 2019 Legislative Session was similar to this bill in that it required the basic peace officer course curriculum to include on the topic of hate crimes a specified hate crimes video developed by POST. AB 1052 was held on the Senate Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Agudath Israel of California
Ajc San Francisco
Alameda County District Attorney's Office
Anti-defamation League
Association of Regional Center Agencies
California Asian Pacific American Bar Association
California Women's Law Center
Center for The Study of Hate & Extremism - California State University, San Bernardino
Democratic Majority for Israel
Democrats for Peace in The Middle East
Disability Rights California
Equality California
Hindu American Foundation, INC.
Human Rights Campaign
Jewish Community Federation and Endowment Fund
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles, the
Jewish Long Beach
Jewish Public Affairs Committee
Lgbt Caucus of The California Democratic Party
Los Angeles Museum of The Holocaust
Progressive Zionists of California
Sikh Coalition
Simon Wiesenthal Center, INC.
Stonewall Democratic Club
The Arc and United Cerebral Palsy California Collaboration
Zioness Movement INC

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

Date of Hearing: May 19, 2020
Counsel: David Billingsley

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

AB 2617 (Gabriel) – As Amended May 6, 2020

SUMMARY: Requires California to honor Gun Violence Restraining Orders (GVRO), as specified, that are issued by states other than California. Clarifies time frame for a law enforcement officer to file a copy of a temporary emergency GVRO with the court. Specifically, **this bill:**

1) States that any person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so because of a by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a GVRO, as specified, is guilty of a misdemeanor.

   Prohibits a person convicted of the misdemeanor, described above, from owning or possessing a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order.

2) States that a law enforcement officer who requests a temporary emergency GVRO must file a copy of the order with the court as soon as practicable, but not later than 3 court days, after issuance.

EXISTING LAW:

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

2) Requires, upon issuance of a GVRO, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)

3) Allows a law enforcement officer to request a temporary emergency GVRO when the following conditions are met:

   a) The subject poses an immediate and present danger of causing personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

   b) A temporary emergency gun violence restraining order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or

inappropriate for the circumstances of the subject of the petition. (Pen. Code, § 18125.)

4) States that a law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

   a) If the request is made orally, sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council;

   b) Serve the order on the restrained person, if the restrained person can reasonably be located;

   c) File a copy of the order with the court as soon as practicable after issuance; and

   d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. (Pen. Code, § 18140, subd. (a)-(d).)

5) Allows the following individuals to file a petition requesting that the court issue an ex parte GVRO, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition:

   a) A family member of the subject of the petition;

   b) An employer of the subject of the petition;

   c) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;

   d) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role; or

   e) A law enforcement officer. (Pen. Code, §18150.)(Effective September 1, 2020.)

6) States that the court, before issuing an ex parte GVRO, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Pen. Code, § 18155, subd. (a).)

7) Requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or to another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors, and that less restrictive alternatives have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Pen. Code, § 18150, subd. (b).)

8) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

   a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

   b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;

   c) A violation of an emergency protective order that is in effect at the time the court is considering the petition;

   d) A recent violation of an unexpired protective order;

   e) A conviction for any specified offense resulting in firearm possession restrictions; or,

   f) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1).)

9) States that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Pen. Code, § 18160, subd. (b).)

10) Requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Pen. Code, § 18160, subd. (c).)

11) Allows the following individuals to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a between one and five years:

   a) A family member of the subject of the petition;

   b) An employer of the subject of the petition;

   c) A coworker of the subject of the petition, if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;

   d) An employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role; or

e) A law enforcement officer. (Pen. Code, § 18170.)(Effective September 1, 2020.)

12) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)

13) Provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, § 18205.)

14) Makes it a crime to violate specified out of state domestic violence orders in the state of California. (Pen. Code, § 273.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While California has taken steps to enforce certain equivalent out-of-state firearm restraining orders, current law still requires more clarity to ensure that out of state gun violence restraining orders can be enforced. This gap in the law could lead to unfortunately dangerous situations in California. We should acknowledge the lawful decisions made by outside jurisdictions when it comes to preventing, protecting, and intervening in matters that could lead to harm.

"AB 3617 will close this dangerous loophole by allowing California courts to enforce firearms prohibitions issued by other states. Subjects of out-of-state orders will thus be prohibited from purchasing a firearm in California and law enforcement will be able to disarm these individuals."

2) **Gun Violence Restraining Orders**: California's GVRO laws went into effect on January 1, 2016. Once a GVRO issued against a person it prohibits him or her from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: 1) a temporary emergency GVRO, 2) an ex-parte GVRO, and 3) a GVRO issued after notice and hearing. All three GVROs

prohibit the subject of the order from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a specified time period.

A law enforcement officer may seek a temporary emergency GVRO from a judicial officer orally or by submitting a written petition to a judicial officer. The officer must assert and the judicial officer must find that there is reasonable cause to believe two things. First, the subject of the order poses an immediate and present danger to him or herself by virtue of access to a firearm or ammunition. Second, the temporary emergency order is necessary to prevent injury to the subject of the order or another because alternative solutions have proved ineffective or are otherwise inadequate or inappropriate. A temporary emergency GVRO expires 21 days after it is issued. Within those 21 days, there must be a hearing to determine whether a more permanent GVRO should be issued. An officer must file a copy to the temporary emergency GVRO with the court as soon as practicable after issuance of the order. This bill would provide additional specification regarding the time period by stating that the order must be filed "as soon as practicable, *but not later than three court days*, after issuance"

An immediate family member or a law enforcement officer can petition for an ex parte GVRO. Effective September 1, 2020, a coworker may petition for a GVRO if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer. Effective September 1, 2020, an employee or teacher of a secondary or postsecondary school that the subject has attended in the last six months, if the employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisorial role may petition for a GVRO. An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for up to 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order. Effective September 1, 2020, a GVRO issued after notice and hearing has been provided to the person to be restrained can last for one to five years.

3) **California Recognizes and Upholds a Variety of Firearm Prohibitions Imposed by Other States:** The federal Violence Against Women Act (VAWA) requires jurisdictions to give full faith and credit to protection orders issued by other jurisdictions. 18 U.S.C. § 2265. Full faith and credit means that jurisdictions must honor and enforce protection orders from out of state.

Under the federal law, if the protection order is ex parte, notice and opportunity to be heard must be provided within the time required by the law of the issuing jurisdiction, and in any event within a reasonable period of time after the order is issued, sufficient to protect the respondent's due process rights. 18 U.S.C. § 2265(b)(2). This means that the protection order is enforceable after the respondent has been provided with notice even if the hearing has not yet been held, as long as there will be an opportunity to be heard within a reasonable period of time before a final order is issued.
(http://www.ncdsv.org/images/ProsecutorGuideFFCforPO.pdf)

California codified full faith and credit for out of state domestic violence orders in 2019. AB 164 (Cervantes), Chapter 726, Statutes of 2019, prohibited a person from purchasing or possessing a firearm in California if that person is subject to a similar valid restraining order, injunction, or protective order issued by another state for acts including civil harassment, workplace violence, school violence, and domestic violence, if the out-of-state order includes a firearm prohibition.

This bill would take a similar approach for out of state orders that are comparable to California GVROs.

4) **States with Similar Prohibitions to GVRO and Standard of Proof for Final Orders:** Giffords Law Center to Prevent Gun Violence has compiled information on states that have created "Extreme Risk Protection Orders." California's version of an "Extreme Risk Protection Order" is the GVRO. Giffords Law Center to Prevent Gun Violence describes "Extreme Risk Protection Orders" as a process which allows families, household members, or law enforcement officers to petition a court directly for an extreme risk protection order which temporarily restricts a person's access to guns. Below is a list of states that have Extreme Risk Protection Orders and their respective standard of proof required before a court can issue a final order:

Preponderance of the Evidence

District of Columbia	Hawaii
Massachusetts	New Jersey
New Mexico (Effective in May 2020)	Washington

Clear and Convincing Evidence

California	Colorado
Delaware	Florida
Illinois	Maryland
Nevada	New York
Oregon	Rhode Island
Vermont	

(https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/)

California has a higher standard of proof (clear and convincing evidence) than some states (preponderance of the evidence) that have similar firearm restraining orders. The elements required to be demonstrated to authorize a firearm restraining order do not necessarily match the elements required in California. This bill would require that an out of state order be "similar or equivalent to a GVRO" to trigger criminal liability for possession in California in violation of the out of state order. It is not clear an order issued under a different standard of proof would be "similar or equivalent to a California GVRO. The "similar or equivalent" language is the same language that was used in AB 164 (Cervantes), Chapter 726, Statutes of 2019 for out of state domestic violence orders.

5) **California is a Point of Contact State for Background Checks:** California law requires any prospective purchaser of (or transferee or person being loaned) a firearm to submit an

application to purchase the firearm (also known as a "Dealer Record of Sale" or "DROS" form) through a licensed dealer to DOJ. The dealer must submit firearm purchaser information to DOJ on the date of the application through electronic transfer, unless DOJ makes an exception allowing a different format. The purchaser must present "clear evidence" of his or her identity and age to the dealer (either a valid California driver's license or a valid California identification card issued by the Department of Motor Vehicles). Dealers must obtain the purchaser's name, date of birth, and driver's license or identification number electronically from the magnetic strip on the license or ID card. This information cannot be supplied by any other means except as authorized by DOJ. Once this information is submitted, DOJ will check available and authorized records, including the federal NICS database, in order to determine whether the person is prohibited from possessing, receiving, owning, or purchasing a firearm by state or federal law. (http://lawcenter.giffords.org/background-checks-in-california/)

Federal law provides states with the option of serving as a state "point of contact" and conducting their own background checks using state, as well as federal, records and databases, or having the checks performed by the FBI using only the federal National Instant Criminal Background Check System ("NICS") database. Note that state files are not always included in the federal database. https://lawcenter.giffords.org/background-check-procedures-in-california/

California is a state that acts as a "Point of Contact" for all firearm transactions. Prior to passage of Proposition 63 in 2016, California authorized, but did not require, the DOJ to act as a point of contact for firearm background checks. Effective July 1, 2017, Proposition 63 required the California DOJ to continue to serve as the point of contact for firearm purchaser background checks. Firearms dealers must therefore initiate the background check required by federal law by contacting the California DOJ. (http://lawcenter.giffords.org/background-checks-in-california/) When California DOJ runs the background check they also check whether the person is federally eligible to purchase a firearm. When the NICs check indicates that a person is prohibited, DOJ does not necessarily see the reason the person is prohibited.

In addition to checking the federal NICS database, DOJ is required to examine its own records, as well as those records that it is authorized to request from the State Department of State Hospitals. If the person is prohibited from possessing firearms under state or federal law, DOJ must immediately notify the dealer and the local sheriff or chief of police in the city and/or county where the sale was made. Licensed dealers are prohibited from delivering a firearm to a purchaser or transferee if the dealer has been notified by DOJ that the person is prohibited from possessing firearms. Id.

This bill specifies that any person who owns or possesses a firearm or ammunition with knowledge that they are prohibited from doing so because of a by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a Gun Violence Restraining Order (GVRO), as specified, is guilty of a misdemeanor. This bill would not change the process that DOJ engages in when determining if someone is a prohibited person when conducted a background check into a potential firearm purchase. An individual with an out of state GVRO would not show up as a prohibited person on a background check unless the state that issued the GVRO uploaded the order into the NICS system. If the out of state rder was in

the NICS system the person would show up as a prohibited person.

6) **Practical Difficulties in Enforcing Out of State Orders:** It is not clear how California law enforcement would be aware of an out of state GVRO. Independent of this of this bill, California already has a number of protections to prevent out of state visitors from purchasing handguns in California. To the extent that a law enforcement officer was trying to make a determination as to whether a person in California (either a temporary visitor or permanent resident) had an active out of state GVRO, the California databases normally consulted by a law enforcement officer likely would not contain a record of an out of state GVRO. If the out of state GVRO was also filed in California it would should up in the armed prohibited persons database. Apparently, out of state domestic violence restraining orders are frequently filed in California, but presumably the person protected by the restraining order is responsible for filing those orders. So an out of state GVRO might or might not show up in the Armed Prohibited Persons System (APPS). California law enforcement might be able to identify the out of state GVRO if the issuing state had uploaded it to a system NLETS, National Law Enforcement Telecommunications System. California law enforcement could also possibly see an out of state GVRO in a public records search, but the mechanisms are not nearly as straightforward as in state GVROs.

   Current law makes it a misdemeanor offense for a person to own or possess a firearm or ammunition with *knowledge* that he or she is prohibited from doing so by a gun violence restraining order. This bill would extend the criminal offense to include similar or equivalent GVROs that were issued in another state. Presumably, guilt could not be established for this offense on the basis of a similar out of state GVRO unless the person had knowledge the order prevented them from possession a firearm or ammunition in California, not just in the state of issuance.

7) **Argument in Support**: According to *Brady United Against Gun Violence*, "While California has recognized other forms of protective orders, like Domestic Violence Restraining Orders from other states, it has not provided authority to enforce GVROs issued by other states. This means that individuals who have been found by a court to pose a dangerous risk of gun violence are able to circumvent a restraining order by moving or travelling to California.

   "From 2000 to 2015, there were 24,922 firearm homicides and 23,682 firearm suicides in California. GVROs are a key tool to prevent these tragedies by temporarily removing firearms from those most at risk. The ability to enforce these orders and similar orders from other states, however, stops at the state's border.

   "Thirty-five percent of guns traced by law enforcement in California come from out-of state. The interdependence of our gun laws and public safety across our state border was shown most recently by the shooting at the Gilroy Garlic Festival. When individuals who purchase weapons from out-of-state or have been identified in other states as posing a risk to public safety are able to avoid restriction by entering California, it is essential that our law enforcement is empowered to enforce out-of-state orders.

   "This bill would make it an offense to possess a firearm in violation of a protective order issued by another state. The effectiveness of GVROs and similar protective orders in other states and the continued risk posed by guns purchased in other states shows that it is

imperative to ensure that law enforcement is able to enforce these orders regardless of where a person travels."

8) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "CACJ has two primary objections. First, with respect to the requirement that the order be promptly entered into a DOJ database, CACJ is concerned that there is no similar provision for correcting or removing expired restraining orders from the DOJ database. In our experience, failure to maintain accurate law enforcement databases frequently leads to wrongful arrests and harassment of our clients. Moreover, such unlawful arrests are frequently used to later justify what would be otherwise be unlawful searches and seizures. Finally, resistance of such wrongful arrests is often itself charged as a crime.

"Second, CACJ is concerned that this bill criminalizes violation of restraining orders that are issued "by an out-of-state jurisdiction that is similar or equivalent to a gun violence restraining order described in this division." Experience has taught that courts have broadly construed such vague cross-referencing to out-of-state procedures, the fairness of which this Legislature has had no opportunity to assess. For instance, out-of-state procedures sometimes disregard the needs of immigrants and those who do not speak English. Moreover, the imputation of "knowledge" regarding the existence, and duration, of restraining orders may be more lax in other states. Wholesale incorporation of out-of-state regimes undercuts the power of this Legislature to ensure a fair process."

9) **Related Legislation**:

a) AB 2616 (Gabriel), would require the Commission on Peace Officers Standards and Training (POST) to develop and implement, on or before January 1, 2022, a course of training for those law enforcement officers regarding gun violence restraining orders. AB 2616 is in the Assembly Public Safety Committee.

b) AB 2532 (Irwin), would add district attorneys to the list of individuals that are authorized to petition a court for a GVRO. AB 2532 is set for hearing in the Assembly Public Safety Committee on May 19, 2020.

10) **Prior Legislation**:

a) AB 61 (Ting), Chapter 725, Statutes of 2019, authorizes an employer, a coworker, or an employee of a secondary or postsecondary school that the person has attended in the last six months to file a petition for an ex parte, one-year, or renewed gun violence restraining order.

b) AB 164 (Cervantes), Chapter 726, Statutes of 2019, prohibits a person from purchasing or possessing a firearm in California if that person is subject to a similar valid restraining order, injunction, or protective order issued by another state for acts including civil harassment, workplace violence, school violence, and domestic violence, if the out-of-state order includes a firearm prohibition.

c) AB 339 (Irwin), Chapter 727, Statutes of 2019, would require each law enforcement agency to develop, adopt, and implement written policies and standards relating to gun violence restraining orders on or before January 1, 2021. AB 339 is currently in the Assembly Appropriations Committee.

d) AB 1493 (Ting), Chapter 733, Statutes of 2019, authorized the subject of a GVRO petition to submit a form to the court voluntarily relinquishing the subject's firearm rights and stating that the subject is not contesting the petition.

e) AB 2526 (Rubio), Chapter 873, Statutes of 2018, allowed law enforcement officers to orally obtain temporary emergency gun violence restraining orders provided they sign a declaration under oath attesting to the facts supporting the request.

f) SB 1200 (Skinner), Chapter 898, Statutes of 2018, made various changes to the GVRO laws in order to address a variety issues that had surfaced since the GVRO was established

g) SB 1331 (Skinner), Chapter 137, Statutes of 2018, required POST to include training on procedures and techniques for assessing lethality or signs of lethal violence in domestic violence situations.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council of California (Sponsor)
Alameda County District Attorney's Office
Bay Area Student Activists
Brady California United Against Gun Violence
Brady United Against Gun Violence
California District Attorneys Association
California State Sheriffs' Association
Everytown for Gun Safety Action Fund
Friends Committee on Legislation of California
Giffords Law Center to Prevent Gun Violence
Hadassah, the Women's Zionist of America, INC.
Jewish Center for Justice
Los Angeles City Attorney
Los Angeles County District Attorney's Office
Los Angeles County Sheriff's Department
March for Our Lives Action Fund
Riverside Sheriffs' Association
San Fernando Valley Young Democrats
Santa Barbara Women's Political Committee
Youth Alive!

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California Attorneys for Criminal Justice

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: May 19, 2020
Counsel: Nikki Moore

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

AB 2554 (Gipson) – As Introduced February 19, 2020

SUMMARY: Encourages the Department of Corrections and Rehabilitation (CDCR) to establish a peer support and crisis referral program. Specifically, **this bill**:

1) States that a peer support and crisis referral program is intended to provides services regarding various topics including substance use and substance abuse, critical incident stress, family issues, grief support, legal issues, line-of-duty deaths serious injury or illness, suicide, victims of crime, and workplace issues.

2) Requires CDCR to consult with an employee representative organization to develop and implement a program created pursuant to this section.

3) Requires CDCR to establish a peer support advisory committee to advise, assist, support, and advocate for the program. States that the committee shall meet at least quarterly and shall offer recommendations on operational policy, procedures, and future direction. States that st least two rank-and-file correctional peace officer representatives, chosen by the correctional peace officer employee organization that represents participants in the department's program, shall serve on the committee. Requires CDCR to also establish a selection panel to screen and process applications, interviews, and member selection for the committee, including two rank-and-file representatives.

4) Defines "Confidential communication" to mean "any information, including, but not limited to, written or oral communication, transmitted between correctional personnel, a peer support team member, or a crisis hotline or crisis referral service staff member while the peer support team member provides peer support services or the crisis hotline or crisis referral service staff member provides crisis services, and in confidence by a means that, as far as the correctional personnel is aware, does not disclose the information to third persons other than those who are present to further the interests of the correctional personnel in the delivery of peer support services or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the peer support team member is providing services." States that "confidential communication" does not include "a communication in which the correctional personnel discloses the commission of a crime or a communication in which the correctional personnel's intent to defraud or deceive an investigation into a critical incident is revealed."

5) States that to be eligible for the confidentiality established. a peer support team member shall complete a training course or courses on peer support approved by CDCR.

6) Permits correctional personnel, whether or not a party to an action, to refuse to disclose, and to prevent another from disclosing, a confidential communication between the correctional

personnel and a peer support team member made while the peer support team member was providing peer support services, or a confidential communication made to a crisis hotline or crisis referral service. Creates exemptions from that right: 1) To refer a correctional personnel to receive crisis referral services by a peer support team member; 2) During a consultation between two peer support team members; 3) If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime; 4) If the correctional personnel expressly agrees in writing that the confidential communication may be disclosed; 5) In a criminal proceeding; 6) If otherwise required by law.

7) States that a correctional personnel, whether or not a party to any action, has a right to refuse to disclose, and to prevent another from disclosing, a confidential communication between the correctional personnel and a crisis hotline or crisis referral service in a civil, administrative, or arbitration proceeding. Permits a crisis hotline or crisis referral service to disclose confidential information communicated by a correctional personnel to prevent reasonably certain death, substantial bodily harm, or commission of a crime.

8) States that these provisions shall not be construed to limit an obligation to report instances of child abuse.

9) States that, except as provided, a peer support team member who provides peer support services and CDCR shall not be liable for damages, including personal injury, wrongful death, property damage, or other loss related to an act, error, or omission in performing peer support services, unless the act, error, or omission constitutes gross negligence or intentional misconduct.

10) Sunsets these provisions in January 1, 2024.

EXISTING LAW:

1) Establishes a Peer Support Program (PSP) as a resource for employees involved in violent, work related situations that may cause serious physical or emotional trauma to the employee. Provides for immediate intervention and counseling to alleviate trauma-related problems and to help an employee remain fully productive. (Department Operations Manual, § 31040.3.2.)

2) Requires the PSP to provide a) specific intervention services and resources, b) professional non-departmental counseling services in a timely manner that meets the employee's needs, and c) assistance through PSP team members and, if needed, facilitation of referrals for counseling by non-departmental licensed mental health professionals who are Psychological First Aid trained for the following situations: physical assault, sexual assault, a hostage incident, an incident causing serious injury/death to person, and direct involvement in critical incidents. (Department Operations Manual, § 31040.3.2.)

3) Establishes that PSP Team Leaders shall be designated as specified; states that each PSP team shall be comprised of ten or more staff with appropriate interest and skills; establishes that the headquarters' team shall include staff from each headquarters' location; and requires the PSP team shall have both male and female members. (Department Operations Manual, §§ 31040.3.2.5 to 31040.3.2.6.)

4) Establishes that a facility manager shall ensure that a local PSP program is available and used in the employee's and facility's best interests. (Department Operations Manual, § 31040.3.2.7.)

5) Requires a departmental coordinator to execute a master contract to provide non-departmental licensed mental health professionals who are trained to debrief and assist staff following an incident, if necessary. Requires a departmental coordinator to provide training to PSP team leaders; assist area PSP Team Leaders, committees, and management in the solution of trauma-related problems; ensure strict confidentiality of the employee's personal information; collect statistics and other pertinent data to monitor program effectiveness; and prepare an annual report summarizing the progress and effectiveness of the program. (Department Operations Manual, § 31040.3.2.8.)

6) Sets forth responsibilities for a supervisor and a PSP team leader in responding to an incident, as specified, and includes requirements to debrief following an incident. (Department Operations Manual, §§ 31040.3.2.9 and 31040.3.2.10.)

7) States that, mindful of the right of individuals to privacy, the Legislature 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, § 6250 et seq.)

8) States that an agency is not required to produce "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov. Code, § 6254, subd. (c).)

9) States that, except as provided, the personnel records of peace officers and custodial officers and records maintained by any state or local agency, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. (Pen. Code, § 832.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Many officers in California prisons are suffering in silence from post-traumatic stress injuries associated with their work-related experiences. As part of are our state's essential workforce, correctional officers must continue to report to work and are on the front lines risking their own health to keep the public safe in the midst of the COVID-19 spread. Now, more than ever, our officers need assistance. AB 2554 will establish a framework to provide critical resources to ensure correctional officers receive the mental health and wellness support they need to work during and beyond this ongoing crisis."

2) **Existing Peer Support Programs at CDCR**: CDCR reports that it has over 1,200 peer supporters statewide.[1] According to CDCR, the current Peer Support Program (PSP) was

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[1] https://www.cdcr.ca.gov/Wellness/psp.html

established to ensure CDCR staff involved in work-related critical incidents are provided with intervention and available resources to cope with the immediate effects of a traumatic incident."[2] The PSP "provides peers who are trained to listen and offer emotional and practical support to help an employee deal with his/her situation in a confidential environment."[3] The PSP exists to provide employees immediate counseling and related services when they are involved in specific violent, work related situations that may cause serious physical and emotional trauma. The purpose is to help "alleviate many trauma-related problems" and assist an employee in remaining "fully productive." (CDCR Department Operations Manual (DOM) Section 31040.3.2.) To accomplish this goal, the currently established PSP is tasked with providing specific intervention services and resources and facilitating referrals for counseling to non-departmental licensed mental health professionals. The program is operated by a facility in conjunction with the Office of Employee Wellness (OEW), which provides PSP training, lesson plans, and curriculum. OEW coordinates with the Office of Training and Professional Development to ensure that all employees receive information annually at the local level about the program.

The Department Operations Manual (DOM) specifies how the current PSP is structured and shall operate. (DOM Section 31040.3.2.) The DOM states that every CDCR facility administrator shall ensure that a local PSP program is available and used in the employee's and Department's best interests, and the administrator is tasked with appointing all members of the PSP team and ensuring that they receive appropriate training. The PSP must include 10 or more staff, which is called a "team" and shall be comprised of both male and female staff who have "appropriate interest and skills." This bill would mandate that any PSLM team include an equal mix of management and non-management employees.

The DOM requires that a departmental PSP coordinator collect statistics and other pertinent data to monitor program effectiveness, and prepare an annual report summarizing the progress and effectiveness of the program. This bill would mandate similar reporting requirements statewide, and would require that information be provided to the Legislature annually.

3) **Current Utilization of PSPs**: The *Officer Health and Wellness: Results from the California Correctional Officer Survey* is a report based on a survey conducted from March to May 2017 of a sample of 8,334 correctional officers and sworn staff. The survey is a "large-scale effort to gather individual-level information on the thoughts, attitudes, and experiences of criminal justice personnel." When questioned about the utilization of CDCR's wellness resources, only **three percent** of responding employees reported utilizing PSPs. The report on the survey provides insight into the minimal use of PSPs: "The concerns officers raise about using the [Employee Assistant Program] help to explain these relatively low participation rates. Only 11% of officers say they do not need these resources, and only 7% say they do not believe that [Employee Assistant Program] would help.... In contrast, fully one-fifth of correctional officers express concern about confidentiality. Another 15% are concerned about the potential for negative consequences from management if they make use of these services. Specifically, 11% fear it would cause them to lose their job and 8% that it would result in loss of their [Concealed Weapons Permit]. Relatedly, 13% of officers say

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[2] Id.
[3] Id.

they worry about negative judgment from coworkers."

4) **COVID-19**: CDCR facilities have been among the most hard-hit during the COVID-19 crises, with hundreds of confirmed cases in the facilities between both incarcerated persons and CDCR employees. This bill would facilitate necessary mental health services in light of the difficulties caused by the spread of the virus to CDCR employees.

5) **Confidentiality of Records or Communications Exchanged in PSP-Related Interactions**: The DOM specifies that the departmental coordinator should "ensure strict confidentiality of the employee's personal information" under any operating PSP.

   This bill instructs CDCR to establish statewide standards for confidentiality between a person seeking PSP services and any person providing assistance through the PSP program. While a CDCR policy, whether it is developed for a local facility or statewide, can establish guidelines for confidentiality, there is no guarantee that information deemed confidential through the policy would remain confidential in a court proceeding or through the California Public Records Act (CPRA).[4] This bill would codify confidentiality requirements.

   To the extent that these provisions create a limit to the public's right of access that does not already exist under current law, these provisions create a limitation on the public's right of access. However, there are no legislative findings limiting the public's right of access to the records under the CPRA, which is constitutionally required when adopting new limitations access to public records.[5] Thus, the constitutionality of these provisions are questionable unless those findings are added to this bill. It is possible that any records that may be within this bill's confidentially purview are already exempt personnel records under Gov. Code, § 6245, subd. (c), or Pen. Code, § 832.7, however there are exceptions to those exemptions that might require records to be disclosed under existing law.

6) **Governor's Veto Message**: The governor has twice vetoed similar efforts to establish peer support programs within CDCR. Last year, he vetoed AB 803 (Gipson), of the 2019-2020 Legislative Session, writing:

   > This bill would require the Department of Corrections and Rehabilitation (CDCR) to establish a Peer Support Labor Management Committee tasked with crafting and updating a standardized statewide policy for CDCR's peer-support program.
   >
   > I strongly support efforts to improve existing peer-support and employee wellness programs for all CDCR employees. However, I am concerned that the committee process envisioned by this bill will duplicate existing programmatic efforts already in place, as well as create additional bureaucratic obstacles to implementation of a consistent and successful program for all employees, not only peace officers.

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[4] Existing law generally provides that no person has a privilege to refuse to be a witness, or refuse to disclose any matter, or to refuse to produce any writing, object, or other thing. (Evid. Code, § 911.). Defines "public records" as 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, § 6250 et seq.)
[5] Calif. Const., art. I, §(3)(b)(2)

> I am signing Assembly Bill 1117, which creates standards for peer-counselor programs for local law enforcement entities. This provides a model for ongoing conversations about this issue. I am directing CDCR to work with the Legislature and proponents of this bill to come to agreement on similar legislation that provides a meaningful voice for affected employees, and is also workable for the Department, as soon as possible.

This bill is modeled after AB 1117.

7) **Argument in Support**: According to the bill's Co-Sponsor, the *California Correctional Peace Officer Association*, "Preliminary data clearly shows that the correctional environment can negatively impact officers' mental and physical health. Many of our officers are suffering in silence from post-traumatic stress injuries associated with their work-related experiences. As such, CCPOA and the CCPOA Benefit Trust Fund are leading an effort to develop programs and policies that can help mitigate the inherent stressors of correctional work.

"We have found that peer support can be an effective means of getting help to officers in need, from other officers who can relate to their experiences. However, a trusted program is paramount to connecting correctional officers with treatment without the fear of stigma or retribution. Having employee representatives at the table to help craft the peer support program policies as proposed by AB 2554 is necessary to enable and encourage our members to seek out and receive crucial behavioral health assistance when they need it.

"Equipping officers with the tools and resources they need to stay mentally and physically healthy will ensure that we continue to serve them and their families, and ultimately will contribute to improving the overall operation of our correctional institutions."

8) **Prior Legislation**:

   a) AB 803 (Gipson) would have required CDCR to establish a Peer Support Labor Management (PSLM) Committee tasked with crafting and updating a standardized statewide policy for CDCR's peer support program. AB 803 was vetoed by the Governor.

   b) AB 1116 (Grayson), Chapter 388, Statutes of 2018-2019, encourages a state or any local or regional public fire agency to establish a peer support and crisis referral service.

   c) AB 1117 (Grayson), Chapter 621, Statutes of 2018-2019, encourages a local or regional law enforcement agency to establish a peer support and crisis referral service.

   d) AB 1116 (Grayson), of the 2017-2018 Legislative Session, would have enacted the Peer Support and Crisis Referral Services Pilot Program to provide peer support and crisis referral services for California's correctional peace officers, parole officers, and firefighters. AB 1116 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Correctional Peace Officers Association (CCPOA) (Co-Sponsor)
California Correctional Peace Officers Association Benefit Trust (Co-Sponsor)
Peace Officers Research Association of California (PORAC)

Opposition

None

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

Date of Hearing: May 19, 2020
Counsel: Nikki Moore

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

AB 2655 (Gipson) – As Amended May 4, 2020

SUMMARY: Makes it a misdemeanor for a first responder, as defined, operating under color of authority, to use an electronic at the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest. Specifically, **this bill**:

1) Makes a violation of this section a misdemeanor punishable by a fine not exceeding five thousand dollars ($5,000) per violation, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

2) Defines "first responder" to mean "a state or local peace officer, paramedic, emergency medical technician, rescue service personnel, public safety dispatcher or public safety telecommunicator, emergency response communication employee, emergency manager, firefighter, coroner, or employee of a coroner."

3) Authorizes the issuance of a search warrant when the property or things to be seized consists of evidence that tends to show that a violation of this section has occurred or is occurring.

EXISTING LAW:

1) Permits a search warrant to be issued as specified, including when the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony, and for specified misdemeanor conduct, including when the property or things to be seized consists of evidence that tends to show a violation of privacy, as specified. (Pen. Code, § 1524, subds. (a)(2) & (a)(18).)

2) States that any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(1).)

3) States that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse,

appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(2).)

4) States that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(3)(A).)

5) States that any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress is guilty of disorderly conduct, a misdemeanor: (Pen. Code, § 647, subd. (j)(4)(A).)

6) Defines "distribution of an image" as "when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image"; (Pen. Code, § 647, subd. (j)(4)(B).)

7) Defines "intimate body part" as "any portion of the genitals, the anus and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing"; and, (Pen. Code, § 647, subd. (j)(4)(C).)

8) States that it shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:

   a) The distribution is made in the course of reporting an unlawful activity; (Pen. Code, § 647, subd. (j)(4)(D)(i).)

   b) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding; or (Pen. Code, § 647, subd. (j)(4)(D)(ii).)

   c) The distribution is made in the course of a lawful public proceeding. (Pen. Code, § 647, subd. (j)(4)(D)(iii).)

9) Makes it a misdemeanor punishable by a fine not to exceed one thousand dollars for a peace officer, any employee of a law enforcement agency, any attorney employed by a governmental agency, or any trial court employee to:
   a) Disclose, for financial gain, information obtained in the course of a criminal investigation, the disclosure of which is prohibited by law; or,

b) Solicit, for financial gain, the exchange of information obtained in the course of a criminal investigation, the disclosure of which is prohibited by law. (Pen. Code, § 146g, subd. (a), (1)-(2).)

10) Makes it a misdemeanor punishable by a fine not to exceed one thousand dollars for any a peace officer, any employee of a law enforcement agency, any attorney employed by a governmental agency, or any trial court employee to solicit any other person, as specified, to disclose, for financial gain, information obtained in the course of a criminal investigation, with the knowledge that the disclosure is prohibited by law. (Pen. Code, § 146g, subd. (b).)

11) Makes it a misdemeanor punishable by a fine not to exceed one thousand dollars for a peace officer, any employee of a law enforcement agency, any attorney employed by a governmental agency, or any trial court employee, to, for financial gain, solicit or sell any photograph or video taken inside any secure area of a law enforcement or court facility, the taking of which was not authorized by the law enforcement or court facility administrator. (Pen. Code, § 146g, subd. (c)(1).)

12) Makes it misdemeanor for a person to solicit any employee of a law enforcement agency, any attorney employed by a governmental agency, or any trial court employee to disclose any photograph or video taken inside any secure area of a law enforcement or court facility, the taking of which was not authorized by the law enforcement or court facility administrator. (Pen. Code, § 146g, subd. (c)(2).)

13) Provides nothing in this section shall apply to officially sanctioned information, photographs, or video, or to information, photographs, or video obtained or distributed pursuant to the California Whistleblower Protection Act or the Local Government Disclosure of Information Act. (Pen. Code, § 146g, subd. (e).)

14) States that notwithstanding any other law, a copy, reproduction, or facsimile of any kind of a photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy, shall not be made or disseminated except, as specified. (Code of Civ. Proc., § 129.)

15) Provides that commencing July 1, 2019, a video or audio recording retained or owned by an agency at the time of the request that relates to a "critical incident," as defined, must be disclosed unless the agency demonstrates that it is necessary to delay disclosure to ensure the successful completion of an investigation. (Gov. Code, § 6254 subd. (f)(4).)

16) States that if the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording. States that the agency may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. Provides that the redaction shall not interfere with the viewer's ability to fully, completely, and accurately

comprehend the events captured in the recording and states that the recording shall not otherwise be edited or altered. (Gov. Code, § 6254 subd. (f)(4)(B)(1).)

17) States that in the event of a police use of force, or incident resulting in great bodily injury or death to a person as a result of a police encounter, the California Public Records Act requires the disclosure of all investigative reports, photographic, audio, and video evidence, transcripts or recordings of interviews, and autopsy reports, among other records. (Pen. Code, § 832.7 subd. (b)(2).)

18) Makes it a misdemeanor for any unauthorized person to willfully and knowingly enter the scene of a flood, storm, fire, earthquake, explosion, accident, or other disaster that is a closed area to the general public by law enforcement, if that person willfully remains within the area after receiving notice to evacuate or leave. (Pen. Code, § 409.5, subd. (c).)

19) States that limitations on access to accident and disaster scene shall not prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed by law enforcement. (Pen. Code, § 409.5, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "We still mourn in the memory of Kobe Bryant, his daughter Gigi, as well as seven others who lost their lives in a helicopter crash on the morning of January 26th, 2020. But what we found afterward was unacceptable – that those who were tasked with responding to this tragedy were inappropriately distributing images they took of the scene for their own personal pleasure. These irresponsible acts could cause civil harm or liability to the affected agencies and are invasive toward the privacy of the families affected. This bill would make it a misdemeanor for a first responder who responds to the scene of an accident or crime to capture the image of a deceased person for any purpose other than an official law enforcement purpose or a genuine public interest."

2) **Background**: A few days after the helicopter crash that killed Kobe Bryant and eight others, the Los Angeles Times reported that a Los Angeles County sheriff's deputy was showing gruesome photos taken at the scene of the tragedy to people in a bar.[1] The Sheriff's Department later determined that eight officers were ultimately involved in taking or obtaining photos from the scene.[2]

   First responders like police and coroners have special access to the scenes of accidents and other deadly incidents by virtue of their public employment. While these employees have many legitimate reasons to capture images of a scene, obtaining photos for purely personal purposes exceeds the scope of employment.

   On May 8, 2020, Vanessa Bryant filed a claim against the Los Angeles Sheriff's Department

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[1] Tchekmedyian, Pringle, *A Deputy Allegedly Showed Off Gruesome Kobe Bryant Crash Photos at Bar. A Cover-Up Scandal Ensued*, Los Angeles Times, Mar. 3, 2020, available at https://www.latimes.com/california/story/2020-03-03/kobe-bryant-crash-photos-sheriffs-department-tried-to-keep-quiet.
[2] *Ibid.*

(LASD), for privacy violations after "deputies were at the scene snapping cell-phone photos of the dead children, parents, and coaches." "As the department would later admit, there was no investigative purpose for deputies to take pictures at the crash site. Rather, the deputies took photos for their own personal purposes."[3]

This bill seeks to penalize conduct of public officials that breaches the public's trust by utilizing their unique access and authority to document tragic events for personal fulfillment and promotion. While other provisions of law criminalize the act of a public official of sharing confidential information for a commercial purpose, this bill is not restricted to cases involving a pecuniary interest—it is intended to penalize additional conduct. Proponents would argue that public officials should be held to a higher standard of conduct based on the public trust in the positions they hold.

3) **Similar Action Has Previously Occurred:** In *Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, an 18-year old woman was tragically killed and nearly decapitated in an automobile accident. Those images were transmitted by two California Highway Patrol officers to friends and family, who posted those images on the internet. The survivors of the 18-year old woman filed claims against the officers. A California Court of Appeal determined that in posting those images, the family's privacy interests were violated because "there [was] no indication that any issue of public interest...was involved" and that the public dissemination of the photograph was a case of "pure morbidity and sensationalism without legitimate public interest or law enforcement purpose." (*Id.* at 874.)

4) **Photography, the First Amendment, and Level of Scrutiny for Review**: The First Amendment to the United States Constitution guarantees to all citizens the right to freedom of speech and association. Photography is quintessential First Amendment activity. This bill restricts photography in certain instances. Thus it imposes a limitation on the First Amendment.

Whether this bill is a content-based or content-neutral regulation will dictate the level of scrutiny that courts will apply to review its ultimate constitutionality. Content-based regulations are subject to strict scrutiny, while content-neutral regulations are subject to intermediate scrutiny which is less exacting.

The government may only impose a content-based regulation of speech if it can satisfy the strict scrutiny standard; that is, whether the law "is necessary to serve a compelling state interest," "that it is narrowly drawn to achieve that end," and that no "less speech-restrictive means exist to achieve the interest."[4] For example, if the government passed a law banning the act of capturing images that depict death in all situations, such a law would be content-based and so broadly drawn that it would like fail strict scrutiny. Outside the limited categories of traditionally regulated speech[5], content based restrictions on speech are

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[3] *Id.* at fn 1.
[4] Taylor, Rebecca, *The First Amendment*, August 15, 2017, American Bar Association, Available at: https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2014/july_2014/the_first_amendment/
[5] Historically, content-based restrictions on speech have been permitted only in a few specific categories that are well-defined. These categories include: speech to incite imminent lawless action, obscenity, defamation, speech

constitutionally suspect.

Content-neutral laws refers to laws that apply to all speech without regard to the substance or message of the speech, and may be regulated based on the time, place, and manner of speech. "[T]he principal inquiry in determining content neutrality, in speech cases generally . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism* (1989) 291 U.S. 781, 791.

It is an open question whether the courts would view this legislation to be content-based or content-neutral.

5) **This Bill Regulates the Conduct of a Limited Class of Public Officials:** The opposition asks: "[W]hy not expand the crime to all persons involved including coroners, medical examiners, investigators, transporters, or even private citizens?" The author has stated that the bill's intent is to limit photography by first responders "who were tasked with responding to this tragedy" and who "were inappropriately distributing images they took of the scene for their own personal pleasure." Thus, the author's stated intent was to narrowly draw the lines of prohibited conduct to address only the harm created by public officials taking photos without a legitimate purpose.

   To limit the photography rights of private citizens would be to regulate conduct that is not at issue in the purpose of this legislation. Additionally, to include private citizens in this bill would be to include the press. Press photographers often take photos that ultimately depict death, especially when covering dangerous events, rallies, war, institutional abuse in state or federal immigration and detention facilities, or a pandemic. It would likely violate the First Amendment to prohibit the taking of such photos by the press or a private individual.

6) **The California Public Records Act Requires Disclosure of Photos Taken for a Lawful Purpose**: While there are various reasons to withhold photos depicting a person's death, California also recognizes cases which demand the disclosure of photos or videos captured or obtained by police or government officials that depict events leading to a death, and depict images of a victim after death. In 2018, the Legislature passed AB 748 (Ting), Chapter 960 and SB 1421 (Skinner), Chapter 988. Both bills compel the disclosure of photos, videos, and reports regarding deaths occurring during police encounters. These photos are taken during the course of a law enforcement or first responder's employment and are not subject to the provisions of this bill.

7) **Fines and Fees**: Any criminal penalty is accompanied by fines and fees that significantly increase the actual cost of the criminal. Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine. The current penalty assessments are approximately 310% plus a flat fee of $79. (See Pen. Code § 1464; Pen. Code § 1465.7; Penal Code § 1465.8; Gov. Code § 70373; Gov. Code § 76000.5; Gov. Code § 76000 et seq.; Gov. Code §76000.10; Gov. Code § 76104.6; Gov. Code §76104.7.) Most invasion of privacy misdemeanor crimes are punishable with a fine of $1,000. The author may consider reducing the maximum fine to align with other similar crimes.

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integral to criminal conduct, so-called "fighting words," child pornography, fraud, true threats, and speech presenting some grave and imminent threat the Government has the power to prevent.

8) **Argument in Support**: According to the *Los Angeles County Sheriff's Department*, "Current law generally prohibits a reproduction of photographs of the body, or portion of the body of a deceased person, taken by or for the coroner at the scene of death or during a death examination or autopsy. However, there is no prohibition of first responders capturing the image of a deceased person for no lawful purpose. On a daily basis, first responders find themselves in situations, as a result of their duties, where they are exposed to deceased persons. First responders are trusted to secure and preserve scenes of great disaster and death. The dignity of the deceased must be protected as well as the privacy of their loved ones."

"With the advancements in cell phone technology and social media platforms, the image of a deceased person can be captured, and uploaded onto the web, where it can be downloaded and viewed then sent and resent hundreds of thousands of times within just minutes of the image being captured. This act is extremely insensitive and can negatively affect grieving families and loved ones who may not have yet been made aware of their loved one's death."

"AB 2655 would make it a misdemeanor for any first responder to use a personal electronic device, or agency device, to capture the image of a deceased person for any purpose other than an official law enforcement purpose or for a genuine public interest. This bill seeks to protect the privacy of families who are already suffering through tragedy and the loss of a loved one and protect the dignity of the deceased."

9) **Argument in Opposition**: According to the *Peace Officers Research Association of California*, "PORAC fully understands the sensitivity and impact of a photo of a deceased person being released to the public. However, law enforcement agencies already have policies and guidelines restricting the release of this information and officers who intentionally publicize these types of photos are disciplined and would likely lose their jobs. Making these actions a crime is not warranted. Furthermore, if this is the direction the author chooses to take, why not expand the crime to all persons involved including coroners, medical examiners, investigators, transporters, or even private citizens?"

10) **Related Legislation**: AB 2372 (Irwin), would make autopsy reports confidential and not disclosable to the public under the California Public Records Act. AB 2372 is pending before this committee.

11) **Prior Legislation**:

a) AB 2427 (Chau), Chapter 467, Statutes of 2016, streamlined the use of postmortem images in civil actions and ensured timely production of expert witness reports before depositions.

b) AB 957 (Wagner), Chapter 53, Statutes of 2013, prohibited the dissemination of a copy, reproduction, or facsimile of a photograph of a body of a deceased person taken by or for a coroner, except as provided.

c) AB 920 (Brownley), Chapter 401, Statutes of 2007, made any peace officer, law enforcement employee, or trial court employee who exchanges or solicits the exchange of information obtained by during the course and scope of his or her official duties for compensation or consideration guilty of a misdemeanor.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Department (Sponsor)

Oppose

Peace Officers Research Association of California (PORAC)

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

Date of Hearing: May 19, 2020
Chief Counsel: Gregory Pagan

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

AB 2532 (Irwin) – As Amended May 7, 2020

SUMMARY: Authorizes a district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of a gun violence restraining order (GVRO), and may represent the officer at any subsequent related court proceeding. Specifically, **this bill**:

1) Authorizes a district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of a GVRO, and may represent the officer at any subsequent related court proceeding.

2) Allows a district attorney to make an ex parte application to extend the time for filing a petition to determine if a seized firearm should be returned to the owner of the firearm.

3) Provides that a district attorney shall inform the owner or person who had possession of the firearm or other deadly weapon, at that person's last known address, by registered mail, return receipt requested, that the person has 30 days from the receipt of the notice to confirm the person's desire for a hearing, and the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. In the event that the person does not reside at the last known address the district attorney shall make a diligent, good faith effort to find the whereabouts of the person.

4) Provides that if a person communicates, to a licensed psychotherapist, a serious threat of physical violence against a reasonably identifiable victim or victims and that threat is conveyed to the district attorney that person may not have possession or custody and control of a deadly weapon for five years from the date of the report.

5) States that upon release of a person that has been detained for examination or their mental health, and where a firearm or other deadly weapon has been confiscated, a district attorney has 30 days to file a petition for a hearing to determine if the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to notify the person that they have 30 days in which to respond, and if they fail to respond the firearm an order of default will issue.

6) Requires the court to transmit a copy of an order of default to the Department of Justice (DOJ).

7) Requires the court if a firearm is disposed with, as specified, to transmit a copy of the order to the DOJ.

8) Makes several conforming changes.

EXISTING LAW:

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

2) Requires, upon issuance of a GVRO, the court to order the restrained person to surrender to the local law enforcement agency all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns. (Pen. Code, § 18120, subd. (b)(1).)

3) Allows an immediate family member of a person or a law enforcement officer to file a petition requesting that the court issue an ex parte GVRO, that expires no later than 21 days from the date of the order, enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition. (Pen. Code, §§ 18150 and 18155, subd. (c).)

4) States that the court, before issuing an ex parte GVRO, shall examine on oath, the petitioner and any witness the petitioner may produce, or in lieu of examining the petitioner and any witness the petitioner may produce, the court may require the petitioner and any witness to submit a written affidavit signed under oath. (Pen. Code, § 18155, subd. (a).)

5) Requires a showing that the subject of the petition poses a significant danger, in the near future, of personal injury to himself or herself, or to another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering specified factors, and that less restrictive alternatives have been ineffective, or are inappropriate for the situation, before an ex parte gun violence restraining order may be issued. (Pen. Code, § 18150, subd. (b).)

6) Specifies in determining whether grounds for a gun violence restraining order exist, the court shall consider all evidence of the following:

    a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

    b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;

    c) A violation of an emergency protective order that is in effect at the time the court is considering the petition;

    d) A recent violation of an unexpired protective order;

    e) A conviction for any specified offense resulting in firearm possession restrictions; or,

    f) A pattern of violent acts or violent threats within the past 12 months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed

toward himself, herself, or another. (Pen. Code, § 18155, subd. (b)(1).)

7) States that an ex parte gun violence restraining order shall be personally served on the restrained person by a law enforcement officer, or any person who is at least 18 years of age and not a party to the action, if the restrained person can reasonably be located. When serving a gun violence restraining order, a law enforcement officer shall inform the restrained person of the hearing that will be scheduled to determine whether to issue a gun violence restraining order. (Pen. Code, § 18160, subd. (b).)

8) Requires, within 21 days from the date an ex parte gun violence restraining order was issued, before the court that issued the order or another court in the same jurisdiction, the court to hold a hearing to determine if a gun violence restraining order should be issued. (Pen. Code, § 18160, subd. (c).)

9) Allows the following persons to request a court, after notice and a hearing, to issue a gun violence restraining order enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one to five years:

   a) An immediate family member of the subject of the petition;

   b) An employer of the subject of the petition;

   c) A coworker of the subject of the petition if they have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer;

   d) An employee or teacher of a secondary or postsecondary school that the subject of the petition has attended in the last six months. if the employee or teacher has obtained the approval of a school administrator or school administration staff member with a supervisorial role; and

   e) A law enforcement officer. (Pen. Code, § 18190, subd. (a)(1)(A)-(E).)

10) States at the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that both of the following are true:

   a) The subject of the petition, or a person subject to an ex parte gun violence restraining order, as applicable, poses a significant danger of personal injury to himself or herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

   b) A gun violence restraining order is necessary to prevent personal injury to the subject of the petition, or the person subject to an ex parte gun violence restraining order, as applicable, or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subd. (b)(1) & (2).)

11) Provides if the court finds that there is clear and convincing evidence to issue a gun violence restraining order, the court shall issue a gun violence restraining order that prohibits the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition. If the court finds that there is not clear and convincing evidence to support the issuance of a gun violence restraining order, the court shall dissolve any temporary emergency or ex parte gun violence restraining order then in effect. (Pen. Code, § 18175, subd. (c)(1) & (2)

12) Requires the court to inform the restrained person that he or she is entitled to one hearing to request a termination of the gun violence restraining order and provide the restrained person with a form to request a hearing. (Pen. Code, § 18180, subd. (b).)

13) States that it is a misdemeanor offense for every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing knowing the information in the petition to be false or with the intent to harass. (Pen. Code, § 18200.)

14) Provides that it is a misdemeanor offense for every person who owns or possesses a firearm or ammunition with knowledge that he or she is prohibited from doing so by a gun violence restraining order and he or she shall be prohibited from having in his or her custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As communities across California continue to endure the trauma of gun violence, I am committed to finding every opportunity we can to continue to make a difference in this fight. Following on my efforts from last year with AB 12 and AB 339 which improved upon Gun Violence Restraining Orders and required every law enforcement agency to create policies to use them, I have been presented with an important change that can help increase their use. District Attorneys across the state are willing to step up and assist law enforcement officers in filing for and defending GVROs in court. As a result of their limited jurisdiction however they have been precluded from joining City Attorneys and County Counsels in representing law enforcement in these petitions. AB 2532 will fix this and add thousands of attorneys to the fight against gun violence in California."

2) **Argument in Support**: The *California District Attorneys Association* states, "As tragic events in Ventura County in 2018 and many others across the country have repeatedly demonstrated, firearms in the hands of mentally ill or potentially violent persons can present the gravest dangers to our communities. Recognizing this risk, legislators provided law enforcement and family members with the ability to obtain Gun Violence Restraining Orders (GVROs) against individuals who pose a danger to themselves or others. In addition to GVROs, the law allows law enforcement to file a civil petition for weapons forfeitures — even when the person is not currently charged with a crime or held in a mental health facility.

"Unfortunately, although the civil firearm forfeiture statutes, PC Section 18400 and W&I Code Section 8102 specify that a 'law enforcement agency' may petition a court to prolong the seizure of a firearm or deadly weapon, the definition of a law enforcement agency does not include district attorneys. Because law enforcement personnel are city and county employees, these proceedings are being handled by city attorneys and county counsels across the state.

"The California District Attorneys Association believes that this omission is unintentional. AB 2532 will correct this oversight by amending existing statutes to incorporate a district attorney as a proper party. This change makes abundant good sense. District attorneys are uniquely situated to address these petitions, in part, because prosecutors are charged with the responsibility of prosecuting crimes or litigating issues of mental health that form the basis for the forfeiture. District attorneys have been expressly designated as the proper party for litigating similar issues in Welfare and Institutions Code § 8103.

"We must continue to do everything possible to restrict access to firearms by those who are mentally ill or potentially violent. AB 2532 addresses an important oversight in achieving that objective and we appreciate your commitment to this vital public safety issue."

3) **Argument in Opposition:** The *California Rifle and Pistol Association states,* "We are expressing our strong opposition to AB 2532. AB 2532 would amend the GVRO procedures that were created by AB 1014 of 2014. CRPA opposed the current GVRO procedures because they provide a mechanism for an individual to lose the right to keep and bear arms with no due process of law. AB 2532 will further compound these problems by authorizing district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of these orders, and to represent an officer in any subsequent court proceedings related to the issuance.

"The GVRO system allows for *ex parte* procedures, the individual whose rights are restricted does not have a righto contest any allegation until up to 21 days after the issuance of the original order. Even if the court finds in favor of the person whose rights were restricted, it may take that individual several months to have their firearm returned.....The current GVRO procedures went into effect a little over three years ago. The expansion of authorized petitioners in AB 61 of 2019 do not go into effect until September 2020. There is no evidence that the expansion of GVRO authority is prudent."

4) **Prior Legislation**: AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the category of persons that may file a petition requesting a court to issue an ex parte temporary GVRO, a one year GVRO, or a renewal of a GVRO, to include an employer, a coworker who has substantial and regular interactions with the subject of the petition for at least one year and has obtained the approval of the employer, and an employee or teacher of a secondary school, or postsecondary school the subject has attended in the last six months and has the approval of a school administrator or a school administration staff member with a supervisorial role.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California District Attorneys Association
California Peace Officers Association
Ventura County District Attorney's Office

Oppose

California Attorneys for Criminal Justice
California Rifle and Pistol Association, INC.

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

Date of Hearing: May 19, 2020
Counsel: Nikki Moore

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

AB 2321 (Jones-Sawyer) – As Amended May 11, 2020

As Proposed to be Amended in Committee

SUMMARY: Permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. **Specifically**, this bill:

1) Allows for access, inspection, or utilization of a record related to an offense, listed in Section 679.10 of the Penal Code, that has been sealed pursuant by a prosecutor or court for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration.

2) States that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

3) Allows for access, inspection, or utilization of a record related to an offense, listed in Section 679.10 of the Penal Code, that has been sealed pursuant by a prosecutor or court for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration.

4) States that the information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

EXISTING STATE LAW:

1) Requires certifying agencies, upon the request of an immigrant victim of crime or their family member, to certify victim helpfulness on the applicable form so that they may apply for a U-Visa. (Pen. Code, § 679.10, subd. (g).)

2) Defines "qualifying criminal activity" to include: rape, torture, human trafficking, incest, domestic violence, sexual assault, abusive sexual conduct, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slavery, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail,

extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, fraud in foreign labor contracting, and stalking. (Pen. Code, § 679.10, subd. (c).)

3) Creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.10, subd. (h).)

4) Mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.10, subd. (j).)

5) Requires certifying agencies, upon the request of an immigrant human-trafficking victim or their family member, to certify victim helpfulness on the applicable form so that they may apply for a T-Visa. (Pen. Code, § 679.11, subd. (f).)

6) Creates a rebuttable presumption that an immigrant human-trafficking victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.11, subd. (g).)

7) Mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.11, subd. (i).)

8) Provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

9) Allows a minor to petition the juvenile court to seal their record relating to an offense that is considered serious or violent and was committed after the minor attained 14 years of age only in the following circumstances:

   a) The person was committed to the Department of Corrections and Rehabilitation, has attained 21 years of age, and has completed their probation after being released from the Department of Corrections and Rehabilitation; or

   b) The person was not committed to the Department of Corrections and Rehabilitation, has attained 18 years of age and has completed any period of probation imposed by the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(i)(I) – (II).)

10) Allows a prosecutor to access the juvenile record relating to an offense that is serious or violent and was committed after the minor attained 14 years of age if the prosecutor believes that the records are necessary to fulfill a disclosure obligation to a defendant in a criminal

case. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

11) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation, then the court shall order the petition dismissed and shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. (Welf. & Inst. Code, § 786, subd. (a).)

12) States that upon the order of dismissal under the court-initiated sealing process, the arrest and other proceedings in the case must be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case. (Welf. & Inst. Code, § 786, subd. (b).)

13) Prohibits automatic sealing upon probation completion if the petition was sustained on the basis of a specified serious or violent offense committed when the individual was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a lesser non-serious and non-violent offense. (Welf. & Inst. Code, § 786, subd. (d).)

14) Allows the court, the prosecuting attorney, the probation department, the person whose record has been sealed, and a child welfare agency to access a record that was sealed by the court-initiated process for limited purposes, as specified. (Welf. & Inst. Code, § 786, subd. (f) – (g).)

15) Allows a prosecutor to access, inspect, or utilize a juvenile records because the juvenile completed an informal supervision program or a term of probation if the prosecutor believes that the records are necessary to fulfill a disclosure obligation to a defendant in a criminal case. (Welf. & Inst. Code, § 786, subd. (g)(1)(K).)

16) Specifies that "access" shall not be deemed an unsealing of the record and shall not require notice to any other agency. (Welf. & Inst. Code, § 786, subd. (g)(3); Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iv).)

EXISTING FEDERAL LAW:

1) Allows an immigrant who has been a victim of a crime to receive a U-Visa if the Secretary of Homeland Security determines the following:

a) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;

b) The petitioner, of if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;

c) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity as described;

d) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,

e) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8 U.S.C. § 1011(a)(15)(U).)

2) Allows an immigrant to receive a T-Visa if the Secretary of Homeland Security determines the following:

a) The person is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;

b) The person is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;

c) The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,

d) The person would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Undocumented Californian's are amongst our most vulnerable residents. This vulnerability can be exploited by individuals wishing to commit a crime, as undocumented individuals may be too fearful of the both the perpetrator and law enforcement to report any crime. Federal law allows undocumented individuals to receive U- and T-Visas to stay in the United States legally, if they cooperate with law enforcement, but undocumented individuals that are the victims of a crime committed by a juvenile are unable to receive a U- or T-Visa.

"AB 2321 allows law enforcement the tools they need to process U&T visas for undocumented individuals that have been the victim of a crime. This bill alleviates the fear of deportation for vulnerable families, and gives them greater comfort in cooperating with law enforcement to solve crimes."

2) **Background**: In 2000 the federal government passed the Victims of Trafficking and Violence Prevention Act (VTVPA) which established both a U-Visa and a T Visa (U&T

Visa) to provide law enforcement another tool to assist in the prosecution of a crime. Specifically, U-Visas and T-Visas are meant to provide undocumented individuals a legal way to remain in the United States, without fear of deportation, if they cooperate with law enforcement in the prosecution of a crime.

To acquire a U-Visas or T-Visas, a victim must prove to the U.S. Citizenship and Immigration Services (USCIS) that they are cooperating with law enforcement. On behalf of a victim, law enforcement submits a Form I-918B (for a U-Visa) or Form I-914B (for a T Visa). However, in California in cases where the perpetrator is a juvenile, law enforcement is unable to certify the helpfulness of an undocumented individual because those juvenile records, including case files, are sealed.

This bill would assist juvenile crime victims in obtaining temporary immigration benefits from the USCIS by providing law enforcement agencies access to sealed juvenile case files for the limited purpose of certifying a U&T-Visa certification form.

In 2018, in Los Angeles County alone, approximately 126 U-Visa petitions were certified out of the 330 petitions received. In 2017, 137 petitions were certified out of 526 applications petition. The bill's sponsor reports that a portion of those uncertified petitions over the past two years were for individuals that were victims of juvenile crimes.

3) **Sealing Procedures in Juvenile Court**: The statutes for sealing juvenile records in California are fairly complicated. In general, most juvenile records of arrests and adjudications are eligible to be sealed and treated as though they never occurred. For less serious offenses, the juvenile court will often seal the record automatically. This is especially true for arrests that did not result in determination of guilt, or if the juvenile satisfactorily completed a probation term or a deferred entry of judgment program. For more serious cases, or when a juvenile does not satisfactorily complete probation or a deferred entry of judgment, they can still petition the court in order to have their records sealed.

   When a juvenile court hears a petition to seal a serious juvenile offense, it looks to a number of factors in order to determine whether or not sealing is appropriate. Among them is whether the juvenile has subsequently been convicted of a felony or of any misdemeanor involving moral turpitude, and whether rehabilitation has been attained to the satisfaction of the court.

   Once a record is sealed, access to the record is so tightly controlled that only under specified exceptions to the law will a party be permitted to access the records. For example, a bill last year expanded a prosecutor's ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. This ensures that a prosecutor is able to fulfill their duties to a criminal defendant.

4) **Need for this Bill**: Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness. This bill should allow for limited access to a sealed file by a prosecutor or judge that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity "for the

limited purpose" of certifying victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration if the victim was a victim of a qualifying criminal activity.

Concerns regarding the misuse of these records is mitigated by the fact that attorneys and judges, who would be subject to professional discipline for the misuse of records, are the only parties given the right to access these records

5) **U-Visas**: In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U-Visa to provide immigrant crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by undocumented victims of crime. In order to qualify for a U-Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

   In order to apply for a U-Visa, the qualified immigrant victim must obtain a certification of a helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U-Visa statute. This certification form is called a Form I-918. While in some jurisdictions the appropriate agencies have been supportive of immigrant victims and have readily signed From I-918 when the immigrant victims have been helpful, other jurisdictions have shown a reluctance to sign these certification forms.

6) **T-Visas**: "The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status ("T-Visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See U and T Visa Law Enforcement Resource Guide, Department of Homeland Security, p. 9, < https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf >.)

   "The T visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status

may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (Id. at pp. 9-10.)

To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) they is or was a victim of a severe form or trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (Id. at p. 9.)

Although declaration is not required for the application (in contrast with a U-Visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (Id. at pp. 10-11.)

7) **Argument in Support**: According to the *Los Angeles District Attorney's Office*, "Foreign nationals who are victims of specified criminal activity and who assist in the detection, investigation or prosecution of that criminal activity may apply for and receive temporary immigration benefits through the issuance of a U visa or T visa. In order to receive a U visa/T visa, a victim must demonstrate to the United States Citizenship and Immigration Services (USCIS) that the applicant has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity.

"The federal application process requires the victim to provide to the USCIS a completed petition for a U visa (Form I-918) along with a signed U visa certification form (Form I-918B) or for a T visa (Form I-914) along with a signed T visa certification form (Form I-914B). U visa certification forms are regularly provided by our office and are required to be signed under penalty of perjury by the designated Bureau Director supervising the office responsible for the prosecution of the relevant criminal case. (8 C.F.R. § 214.14, subds. (a)(2), (a)(3); § 679.10, subds. (a), (b)). Prior to the signing the U visa certification form, the case file and other records must be reviewed to verify that the victim has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity. Absent this verification, the Bureau Director is unable to sign the certification forms under penalty of perjury and the U visa certification request must be denied.

"Victims of crime committed by minors in cases adjudicated by one of the seven locations that comprise our Juvenile Division are eligible to apply for U visa benefits. Unfortunately, this office regularly denies certification requests from juvenile crime victims simply because we are prevented from accessing our case files and other records to confirm that that victim satisfies the certification criteria. This is because Welfare and Institutions Code (WIC) sections 781, 786, 786.5 and 793 authorize the sealing of the minor's "juvenile case file," as defined in WIC section 827, subdivision (e), which includes all police reports, records, papers, and exhibits in a juvenile case in the custody of the juvenile court and any other records relating to the case in the custody of the other agencies, entities, and officials. When the juvenile court has ordered that these records be sealed pursuant to one of these four WIC code sections, the records can only be accessed, inspected, or utilized by this office for

statutorily enumerated purposes, and a U visa /T visa certification request is not one the enumerated purposes.

"AB 2321 would amend the juvenile record sealing provisions of the Welfare and Institutions Code to include judicial and prosecutorial access to sealed juvenile records for the limited purpose of completing a Form I-918B or Form I-914B to certify a victim's helpfulness in the detection, investigation, or prosecution of a qualifying crime.

"AB 2321 will only impact a small number of the hundreds of U and T visa certification requests that our office receive each year. However, each of the affected cases represents a helpful victim/witness of a very serious crime who, but for the sealing of the juvenile file, would likely be entitled to receive the benefits of the U and T visa certification law.

"AB 2321 was inspired by the denial of a U visa certification request made by the family of a child molestation victim. The juvenile court ordered the file sealed and we were prevented from accessing our records to verify the applicant was a helpful victim of qualifying criminal conduct. By all appearances this applicant would likely have received certification, however, we were unable to obtain the information needed to sign the Form I-918 Supplement B certification under penalty of perjury. Without the reform proposed by AB 2321 more of these unnecessary denials will occur."

8) **Related Legislation**:

a) AB 2425 (Stone), would provide for the sealing of juvenile police records and service provider records of youth who are referred to diversion programs directly by police and who avoid contact with the juvenile delinquency court system. AB 2425 is pending before this committee.

b) SB 1126 (Jones), would allow the probation department, the prosecuting attorney, counsel for a minor, and the court to access sealed juvenile records for the purpose of assessing competency, and not for any other purpose. This bill is currently pending before the Senate Public Safety Committee.

9) **Prior Legislation**:

a) AB 917 (Reyes), Chapter 576, Statutes of 2019, reduced the timelines for a certifying entity to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas.

b) AB 1537 (Cunningham), Chapter 50, Statutes of 2019, expanded a prosecutor's ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.

c) AB 2952 (Stone), Chapter 1002, Statutes of 2018, provided that a prosecutor may access, inspect, or use certain juvenile records that have been sealed by the court if the prosecutor believes that it is necessary to meet a legal obligation to provide evidence to a defendant in a criminal case.

d) AB 529 (Stone), Chapter 685, Statutes of 2017, required the sealing of records relating to dismissed or unsustained juvenile court petitions and relating to diversion and supervision programs, as specified.

e) SB 312 (Skinner), Chapter 679, Statutes of 2017, authorized a sealing procedure for juveniles convicted of a serious or violent felony and allowed for access by the prosecutor in order to determine whether they have a disclosure obligation.

f) AB 1945 (Stone), Chapter 858, Statutes of 2016, authorized a child welfare agency to access sealed juvenile records for limited purposes.

g) AB 666 (Stone), Chapter 368, Statutes of 2015, among other things, specified that the prohibition against automatic sealing of a record or dismissing a petition if the petition was sustained based on the commission of a specified serious or violent offense that was committed when the individual was 14 years of age or older does not apply if the finding on that offense was dismissed or was reduced to a lesser offense.

h) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation for any offense other than a specified violent or serious offense.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
Alameda County District Attorney's Office
California Attorneys for Criminal Justice
California District Attorneys Association

Other

Pacific Juvenile Defender Center

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Amended Mock-up for 2019-2020 AB-2321 (Jones-Sawyer (A))

Mock-up based on Version Number 98 - Amended Assembly 5/11/20
Submitted by: Nikki Moore, Public Safety

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

SECTION 1. Section 781 of the Welfare and Institutions Code is amended to read:

781. (a) (1) (A) If a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, if a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or if a minor is taken before any officer of a law enforcement agency, the person or the county probation officer may, five years or more after the jurisdiction of the juvenile court has terminated as to the person, or, if a petition is not filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 626 or was taken before any officer of a law enforcement agency, or, in any case at any time after the person has reached 18 years of age, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, entities, and public officials as the petitioner alleges, in the petition, to have custody of the records. The court shall notify the district attorney of the county and the county probation officer, if they are not the petitioner, and the district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, the person has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case in the custody of the other agencies, entities, and officials as are named in the order. Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.

(B) The court shall send a copy of the order to each agency, entity, and official named in the order, directing the agency or entity to seal its records. Each agency, entity, and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that the agency, entity, or official received.

(C) If a ward of the juvenile court is subject to the registration requirements set forth in Section 290 of the Penal Code, a court, in ordering the sealing of the juvenile records of the person, shall also provide in the order that the person is relieved from the registration requirement and for the destruction of all registration information in the custody of the Department of Justice and other agencies, entities, and officials.

(D) (i) A petition to seal the record or records relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age and resulted in the adjudication of wardship by the juvenile court may only be filed or considered by the court pursuant to this section under the following circumstances:

(I) The person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 21 years of age, and has completed their period of probation supervision after release from the division.

(II) The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court.

(ii) A record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age that has been sealed pursuant to this section may be accessed, inspected, or utilized in a subsequent proceeding against the person under any of the following circumstances:

(I) By the prosecuting attorney, as necessary, to make appropriate charging decisions or to initiate prosecution in a court of criminal jurisdiction for a subsequent felony offense, or by the prosecuting attorney or the court to determine the appropriate sentencing for a subsequent felony offense.

(II) By the prosecuting attorney, as necessary, to initiate a juvenile court proceeding to determine whether a minor shall be transferred from the juvenile court to a court of criminal jurisdiction pursuant to Section 707, and by the juvenile court to make that determination.

(III) By the prosecuting attorney, the probation department, or the juvenile court upon a subsequent finding by the juvenile court that the minor has committed a felony offense, for the purpose of determining an appropriate disposition of the case.

(IV) By the prosecuting attorney, or a court of criminal jurisdiction, for the purpose of proving a prior serious or violent felony conviction, and determining the appropriate sentence pursuant to Section 667 of the Penal Code.

(iii) (I) A record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose,

including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed pursuant to this clause. A ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding. This clause does not impose any discovery obligations on a prosecuting attorney that do not already exist.

(II) ~~A record related to an offense listed in Section 679.10 or 679.11 of the Penal Code that has been sealed pursuant to this section may be accessed, inspected, or utilized by a certifying entity as defined in paragraph (1), (2), or (3) of subdivision (a) of Section 679.10 of the Penal Code, a certifying entity as defined in paragraph (1), (2), or (3) of subdivision (a) of Section 679.11 of the Penal Code, or a representative of a social service agency who is the person certifying victim helpfulness with the aid of a record to be obtained under this section,~~ A record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined in subdivision (c) of section 679.10 of the Penal Code, of the Penal Code may be accessed by a judge or prosectuor for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. The information obtained pursuant to this subclause shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

(III) This clause shall not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300.

(iv) A sealed record that is accessed, inspected, or utilized pursuant to clause (ii) or (iii) shall be accessed, inspected, or utilized only for the purposes described therein, and the information contained in the sealed record shall otherwise remain confidential and shall not be further disseminated. The access, inspection, or utilization of a sealed record pursuant to clause (ii) or (iii) shall not be deemed an unsealing of the record and shall not require notice to any other entity.

(E) Subparagraph (D) does not apply in cases in which the offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age was dismissed or reduced to a misdemeanor by the court. In those cases, the person may petition the court to have the record sealed, and the court may order the sealing of the record in the same manner and with the same effect as otherwise provided in this section for records that do not relate to an offense listed in subdivision (b) of Section 707 that was committed after the person had attained 14 years of age.

(F) Notwithstanding subparagraphs (D) and (E), a record relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age for which the person is required to register pursuant to Section 290.008 of the Penal Code shall not be sealed.

(2) An unfulfilled order of restitution that has been converted to a civil judgment pursuant to Section 730.6 shall not be a bar to sealing a record pursuant to this subdivision.

(3) Outstanding restitution fines and court-ordered fees shall not be considered when assessing whether a petitioner's rehabilitation has been attained to the satisfaction of the court and shall not be a bar to sealing a record pursuant to this subdivision.

(4) The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may order the inspection of the records. Except as provided in subdivision (b), the records shall not be open to inspection.

(b) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(c) (1) Subdivision (a) does not apply to Department of Motor Vehicles records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.

(2) Notwithstanding any other law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requestor code numbers by the department. Any insurer to which a record of conviction is disclosed, when the conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.

(3) This subdivision does not prevent the sealing of any record which is maintained by any agency or party other than the Department of Motor Vehicles.

(4) This subdivision does not affect the procedures or authority of the Department of Motor Vehicles for purging department records.

(d) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section as follows: five years after the record was ordered sealed, if the person who is the subject of the record was alleged or adjudged to be a person described by Section 601; or when the person who is the subject of the record reaches 38 years of age if the person was alleged or adjudged to be a person described by Section 602, except that if the subject of the record was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707 when the person was 14 years of age or older, the record shall not be destroyed. Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.

(e) The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity.

(f) This section shall not permit the sealing of a person's juvenile court records for an offense where the person is convicted of that offense in a criminal court pursuant to the provisions of Section 707.1. This subdivision is declaratory of existing law.

(g) (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

(2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to any records sealed pursuant to this section for the limited purposes of enforcing a civil judgment or restitution order.

(h) (1) On and after January 1, 2015, each court and probation department shall ensure that information regarding the eligibility for and the procedures to request the sealing and destruction of records pursuant to this section shall be provided to each person who is either of the following:

(A) A person for whom a petition has been filed on or after January 1, 2015, to adjudge the person a ward of the juvenile court.

(B) A person who is brought before a probation officer pursuant to Section 626.

(2) The Judicial Council shall, on or before January 1, 2015, develop informational materials for purposes of paragraph (1) and shall develop a form to petition the court for the sealing and destruction of records pursuant to this section. The informational materials and the form shall be provided to each person described in paragraph (1) when jurisdiction is terminated or when the case is dismissed.

SEC. 2. Section 786 of the Welfare and Institutions Code is amended to read:

786. (a) If a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, the court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed. If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age. Each agency and official named in the order shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and, after advising the court, shall seal the copy of the court's order that was received. The court shall also provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified in subdivision (b).

(b) Upon the court's order of dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case.

(c) (1) For purposes of this section, satisfactory completion of an informal program of supervision or another term of probation described in subdivision (a) shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of supervision or probation and if the person has not failed to substantially comply with the reasonable orders of supervision or probation that are within their capacity to perform. The period of supervision or probation shall not be extended solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records under this section.

(2) An unfulfilled order or condition of restitution, including a restitution fine that can be converted to a civil judgment under Section 730.6 or an unpaid restitution fee shall not be deemed to constitute unsatisfactory completion of supervision or probation under this section.

(d) A court shall not seal a record or dismiss a petition pursuant to this section if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.

(e) If a person who has been alleged to be a ward of the juvenile court has their petition dismissed by the court, whether on the motion of the prosecution or on the court's own motion, or if the petition is not sustained by the court after an adjudication hearing, the court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed. Each agency and official named in the order shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and, after advising the court, shall seal the copy of the court's order that was received. The court shall also provide notice to the person and the person's counsel that it has ordered the petition dismissed and the records sealed in the case. The notice shall include an advisement of the person's right to nondisclosure of the arrest and proceedings, as specified in subdivision (b).

(f) (1) The court may, in making its order to seal the record and dismiss the instant petition pursuant to this section, include an order to seal a record relating to, or to dismiss, any prior petition or petitions that have been filed or sustained against the individual and that appear to the satisfaction of the court to meet the sealing and dismissal criteria otherwise described in this section.

(2) An individual who has a record that is eligible to be sealed under this section may ask the court to order the sealing of a record pertaining to the case that is in the custody of a public agency other than a law enforcement agency, the probation department, or the Department of Justice, and the court may grant the request and order that the public agency record be sealed if the court determines that sealing the additional record will promote the successful reentry and rehabilitation of the individual.

(g) (1) A record that has been ordered sealed by the court under this section may be accessed, inspected, or utilized only under any of the following circumstances:

(A) By the prosecuting attorney, the probation department, or the court for the limited purpose of determining whether the minor is eligible and suitable for deferred entry of judgment pursuant to Section 790 or is ineligible for a program of supervision as defined in Section 654.3.

(B) By the court for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388.

(C) If a new petition has been filed against the minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to implement a referral to a remedial program or service, and shall not be used to support the imposition of penalties, detention, or other sanctions upon the minor.

(D) Upon a subsequent adjudication of a minor whose record has been sealed under this section and a finding that the minor is a person described by Section 602 based on the commission of a felony offense, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of determining an appropriate juvenile court disposition. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

(E) Upon the prosecuting attorney's motion, made in accordance with Section 707, to initiate court proceedings to determine whether the case should be transferred to a court of criminal jurisdiction, by the probation department, the prosecuting attorney, counsel for the minor, or the court for the limited purpose of evaluating and determining if such a transfer is appropriate. Access, inspection, or use of a sealed record as provided under this subparagraph shall not be construed as a reversal or modification of the court's order dismissing the petition and sealing the record in the prior case.

(F) By the person whose record has been sealed, upon their request and petition to the court to permit inspection of the records.

(G) By the probation department of any county to access the records for the limited purpose of meeting federal Title IV-B and Title IV-E compliance.

(H) The child welfare agency of a county responsible for the supervision and placement of a minor or nonminor dependent may access a record that has been ordered sealed by the court under this section for the limited purpose of determining an appropriate placement or service that has been ordered for the minor or nonminor dependent by the court. The information contained in the sealed record and accessed by the child welfare worker or agency under this subparagraph may be shared with the court but shall in all other respects remain confidential and shall not be disseminated to any other person or agency. Access to the sealed record under this subparagraph shall not be construed as a modification of the court's order dismissing the petition and sealing the record in the case.

(I) By the prosecuting attorney for the evaluation of charges and prosecution of offenses pursuant to Section 29820 of the Penal Code.

(J) By the Department of Justice for the purpose of determining if the person is suitable to purchase, own, or possess a firearm, consistent with Section 29820 of the Penal Code.

(K) (i) A record that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. A request to access information in the sealed record for this purpose, including the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed, shall be submitted by the prosecuting attorney to the juvenile court. The juvenile court shall notify the person having

the sealed record, including the person's attorney of record, that the court is considering the prosecutor's request to access the record, and the court shall provide that person with the opportunity to respond, in writing or by appearance, to the request prior to making its determination. The juvenile court shall review the case file and records that have been referenced by the prosecutor as necessary to meet the disclosure obligation and any response submitted by the person having the sealed record. The court shall approve the prosecutor's request to the extent that the court has, upon review of the relevant records, determined that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed record information in order to protect the confidentiality of the person whose sealed record is accessed pursuant to this subparagraph. A ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding. This subparagraph does not impose any discovery obligations on a prosecuting attorney that do not already exist.

(ii) This subparagraph shall not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300.

(L) ~~A record related to an offense listed in Section 679.10 679.11 of the Penal Code that has been sealed pursuant to this section may be accessed, inspected, or utilized by a certifying entity as defined in paragraph (1), (2), or (3) of subdivision (a) of Section 679.10 of the Penal Code, a certifying entity as defined in paragraph (1), (2), or (3) of subdivision (a) of Section 679.11 of the Penal Code, or a representative of a social service agency who is the person certifying victim helpfulness with the aid of a record to be obtained under this section,~~ A record that was sealed pursuant to this section that was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense as defined in subdivision (c) of section 679.10 of the Penal Code, may be accessed by a judge or prosecutor, for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration. The information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

(2) When a record has been sealed by the court based on a dismissed petition pursuant to subdivision (e), the prosecutor, within six months of the date of dismissal, may petition the court to access, inspect, or utilize the sealed record for the limited purpose of refiling the dismissed petition based on new circumstances, including, but not limited to, new evidence or witness availability. The court shall determine whether the new circumstances alleged by the prosecutor provide sufficient justification for accessing, inspecting, or utilizing the sealed record in order to refile the dismissed petition.

(3) Access to, or inspection of, a sealed record authorized by paragraphs (1) and (2) shall not be deemed an unsealing of the record and shall not require notice to any other agency.

(h) (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution ordered pursuant to Section 730.6. A minor is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because the minor's records are sealed.

(2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to records sealed pursuant to this section for the limited purpose of enforcing a civil judgment or restitution order.

(i) This section does not prohibit the State Department of Social Services from meeting its obligations to monitor and conduct periodic evaluations of, and provide reports on, the programs carried under federal Title IV-B and Title IV-E as required by Sections 622, 629 et seq., and 671(a)(7) and (22) of Title 42 of the United States Code, as implemented by federal regulation and state statute.

(j) The Judicial Council shall adopt rules of court, and shall make available appropriate forms, providing for the standardized implementation of this section by the juvenile courts.

SEC. 3. 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: May 19, 2020
Chief Counsel: Gregory Pagan

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

AB 2891 (Jones-Sawyer) – As Introduced February 21, 2020

SUMMARY: Makes security and safety officers at the California Science Center at Exposition Park peace officers whose authority extends to any place in the state while performing their primary duties, and makes conforming changes.

EXISTING LAW:

1) Requires that any person or persons desiring peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who, on January 1, 1990, were not entitled to be designated as peace officers under that chapter shall request the Commission on Peace Officers Standards and Training (POST) to undertake a feasibility study regarding designating that person or persons as peace officers. The request and study shall be undertaken in accordance with regulations adopted by POST. POST may charge any person, with specified exceptions, requesting a study, a fee, not to exceed the actual cost of undertaking the study. (Pen. Code, § 13540, subd. (a).)

2) Provides that any study undertaken under this article shall include, but shall not be limited to, the current and proposed duties and responsibilities of persons employed in the category seeking the designation change, their field law enforcement duties and responsibilities, their supervisory and management structure, their proposed training methods and funding sources and the extent to which their current duties and responsibilities require additional peace officer powers and authority. (Pen. Code, § 13540, subd. (b).)

3) Defines "independent institutions of higher education" as those nonpublic higher education institutions that grant under graduate degrees, graduate degrees, or both, and are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education (USDOE). (Ed. Code § 66010, subd. (b).)

4) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training (POST) and that after July 1, 1989 satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code. § 832, subd. (a).)

5) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832, subd. (b).)

6) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832, subd. (c).)

7) Provides that the following are peace offices, who may carry firearms only if authorized and under terms and conditions specified by their employing agency, whose authority extends to any place in California for the purpose of performing their primary duty, or when making an arrest for a public offense where there is immediate danger to a person or property or to prevent the perpetrator's escape, as specified, or during a state of emergency, as specified:

   a) Members of the San Francisco Bay Area Rapid Transit District Police Department if their primary duty is enforcement of the law in or about property owned, operated or administered by the district or when performing a necessary duty with respect to patrons, employees and properties of the district;

   b) Harbor or port police if their primary duty is enforcement of law in or about property owned, operated or administered by harbor or port or when performing a necessary duty with respect to patrons, employees and properties of the harbor or port;

   c) Transit police officers or peace offices of a county, city, transit development board or district if the primary duty is the enforcement of the law in or abut property owned, operated or administered by the employing agency or when performing a necessary duty with respect to patrons, employees and properties of the employing agency;

   d) Persons employed as airport law enforcement officers by a city, county or district operating the airport or a joint powers agency operating the airport if their primary duty is the enforcement of the law in or about property owned, operated and administered by the employing agency or when performing a necessary duty with respect to patrons, employees and properties of the employing agency; and,

   e) Railroad police officers commissioned by the Governor if their primary duty is the enforcement of the law in or about property owned, operated or administered by the employing agency or when performing necessary duties with respect to patrons, employees and properties of the employing agency. (Penal Code Section 830.33.)

8) Provides that numerous types of publicly employed security officers are granted the powers of arrest of a peace officer although they are not peace officers. These persons may exercise the powers of arrest of a peace officer, as specified, during the course and within the scope of their employment if they successfully complete a course in the exercise of those powers, as specified, which has been certified by POST. Persons currently granted such powers are:

   a) Persons designated by a cemetery authority, as specified;

   b) Persons regularly employed as security officers for independent institutions of higher education, as specified, if the institution has concluded a Memorandum of Understanding (MOU) permitting the exercise of that authority with the sheriff or the chief of police within whose jurisdiction the institution lies;

   c) Persons regularly employed as security officers for health facilities, as specified, that are owned and operated by cities, counties, and cities and counties if the facility has concluded a MOU permitting the exercise of that authority with the sheriff or the chief of police within whose jurisdiction the facility lies;

d) Employees or classes of employees of the California Department of Forestry and Fire Protection (CDFFP) designated by the CDFFP Director, provided that the primary duty of the employee shall be the enforcement of the law, as specified;

e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as specified, if the district has concluded a MOU permitting the exercise of that authority with, as applicable, the sheriff, the chief of police, or the Department of the California Highway Patrol within whose jurisdiction the district lies;

f) Non-peace officers regularly employed as county parole officers, as specified;

g) Persons appointed by the Executive Director of the California Science Center, as specified; and,

h) Persons regularly employed as investigators, as specified, by the Department of Transportation for the City of Los Angeles and designated by local ordinance as public officers to the extent necessary to enforce laws related to public transportation and authorized by a MOU with the chief of police permitting the exercise of that authority. (Pen. Code, § 830.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, " AB 2891 improves public safety at the California Science Center, in my district, by providing their security officers peace officer status, recognizing the responsibility they already have to act as the primary security personnel for the Center and honors the Memorandum of Understanding that the California Statewide Law Enforcement Association entered into with the state. Museum Security Officers at the Science Center are responsible for keeping visitors, including the 350,000 children and students, safe. It only makes sense that we honor the Memorandum of Understanding, and vest Museum Officers in my district with the title of peace officer, which they have already been living up to."

2) **POST Feasibility Study**: In 1989, SB 353 (Presley), Chapter 1165, Statutes of 1989, was introduced as a result of interim hearings of the Senate Judiciary Subcommittee on Corrections and Law Enforcement Agencies. SB 353 regrouped peace officer categories according to the nature of their jurisdiction rather than the scope of their authority. SB 353 also required a POST review of all classification requests prior to legislative consideration of granting peace officer status in the future, or where there is a request to change peace officer designation or status.

   Pursuant to SB 353, Penal Code Section 13540 provides that POST may charge a fee to the person or entity requesting a feasibility study. The study must be completed within 18 months and include a review of the proposed duties and responsibilities of the person employed in the category seeking peace officer designation. (Penal Code Sections 13541 and 13542.)

It is a general rule that one legislative body cannot limit or restrict the power of subsequent Legislatures, and the act of one Legislature does not bind its successors (see *In re Collie* (1952) 38 Cal.2d 396, 398). Thus a statute purporting to condition future legislative action on compliance with conditions in that statute may be superseded by subsequent contrary legislative action. Therefore, the present Legislature, if it so chooses, need not comply with the Penal Code Section 13540 POST feasibility study requirement.

3) **Prior Legislation**: AB 2361, Chapter 336, Statutes of 2016, allowed a security officer employed by an independent institution of higher learning to be deputized or appointed as a reserve deputy or reserve officer by the sheriff or chief of police of the jurisdiction in which the institution is located.

4) **Argument in Support**: According to the *California Statewide Law Enforcement Association*, "AB 2891 will codify an agreement made in the 2019 Memorandum of Understanding between the California Statewide Law Enforcement Association, Bargaining Unit 7, and the State of California.

"Exposition Park, a 160-acre park located in South Los Angeles, is home to the California Science Center, the Natural History Museum of LA County, the Memorial Coliseum, and many other outdoor activities. With approximately 350,000 visitors to the park each year. The California Science Center Museum Security Officers respond to hundreds of calls each month that include battery, robbery, graffiti, among other crimes. Due to the nature of the crimes that our officers were responding to, we came to an agreement in CSEA's MOU in 2019 with the State of California to reclassify these officers as peace officers, which will provide them the appropriate salary and benefits for their job classification.

"This simple fix in statute is necessary to ensure that Museum Security Officers are granted full peace officer authority."

REGISTERED SUPPORT / OPPOSITION:

Support

California Statewide Law Enforcement Association

Opposition

None

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

Date of Hearing: May 19, 2020
Counsel: Matthew Fleming

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

AB 3043 (Jones-Sawyer) – As Amended May 11, 2020

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to approve an inmate's request to make a confidential call to their attorney if the attorney's place of work is more than 75 miles from the institution, and requires CDCR to provide the inmate at least 30 minutes per month to make such calls.

EXSTING STATE LAW:

1) Provides that in a criminal case the defendant has the right to the assistance of counsel or the defendant's defense. (Cal. Const. Art. I, Sec. 15.)

2) Provides, generally, that no person has a privilege to refuse to be a witness or to refuse to disclose any matter or to refuse to procedure any writing, object or other thing. (Evid. Code, § 911.)

3) Provides that communications made in the context of an attorney-client relationship are privileged, entitling the holder of the privilege to refuse to disclose, and to prevent another from disclosing, the communication. (Evid. Code, § 954.)

4) Provides that the right of any person to claim the attorney-client privilege is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. (Evid. Code, § 912, subd. (a).)

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

6) Provides that prisoners have the right to correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband. (Pen. Code § 2601, subd. (b).)

7) Provides that the Director of CDCR may prescribe and amend rules and regulations for the administration of the prisons and requires the Director to maintain, publish and make available to the general public, a compendium of such rules and regulations. (Pen. Code § 5058, subds. (a) and (b).)

8) Provides that inmates may not use institution telephones or public coin operated telephones located on institution property except as specifically authorized by CDCR. (Cal. Code Regs.

Tit. 15, § 3018.)

9) Defines a "confidential call" as a telephone call between an inmate and his/her attorney which both parties intend to be private. ((Cal. Code Regs. Tit. 15, § 3282, subd. (a)(2).)

10) Provides that "confidential calls" may be approved on a case-by-case basis by the institution head or designee, upon written request from an attorney on the attorney's office letterhead stationery. (Cal. Code Regs. Tit. 15, § 3282, subd. (g)(1).)

11) Requires an attorney who wishes to conduct a confidential call with their client to make a written request in which the attorney provides in writing the following personal and professional information:

    a) Name;

    b) Mailing address;

    c) Date of Birth;

    d) Valid driver's license or state-issued identification card number;

    e) Proof of current registry and good standing with a governing bar association; and,

    f) Indication of the jurisdiction(s) licensed to practice law. (*Ibid.*)

12) Requires requesting attorneys to report any prior felony convictions or pending arrest dispositions, describe and explain any prior suspension or exclusion from a correctional facility, and declare under penalty of perjury one or more of the following:

    a) They are the named inmate's attorney either by appointment by the court or at the inmate's request;

    b) They have been requested by a judge to interview a named inmate for purposes of possible appointment as counsel by the same court;

    c) They are requesting to call a named inmate who may be a witness directly relevant to a legal process, purpose, or proceeding;

    d) They are seeking to interview a named inmate, at the request of the inmate, for the purpose of representation of the inmate in a legal process, for a legal purpose or in a legal proceeding; and,

    e) They have been requested by a third party to consult with the named inmate when the inmate cannot do so because of a medical condition, disability or other circumstance. (Cal. Code Regs. Tit. 15, § 3282, subd. (g)(2).)

13) Provides that any false statement or deliberate misrepresentation of facts specific to the information required above shall be grounds for denying the request or cause for subsequent suspension or exclusion from all institutions/facilities administered by the department. (Cal.

Code Regs. Tit. 15, § 3282, subd. (g)(3).)

14) Provides that the date, time, duration, and place where the inmate will make or receive the call, and manner of the call are within the discretion of the institution head, except as specified. (Cal. Code Regs. Tit. 15, § 3282, subd. (g)(3).)

15) Provides that it is within the discretion of the institution head to approve or deny a confidential call and that as long as the attorney/client communication privilege is not violated, a confidential call may be denied where the institution head determines that normal legal mail or attorney visits were appropriate means of communication and were not reasonably utilized by the inmate or attorney. (Cal. Code Regs. Tit. 15, § 3282, subd. (g)(6).)

16) Provides that attorney visits shall be conducted in a confidential area specified by the institution/facility and that attorney visiting shall normally be accommodated during the institution/facility regularly scheduled visiting days and hours. (Cal. Code Regs. Tit. 15, § 3178, subd. (b).)

EXSTING FEDERAL LAW: Provides that in all criminal prosecutions, the accused shall enjoy the right … to have the assistance of counsel for his defense. (U.S. Const. 6th Amend.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Access to confidential conversations with an attorney is critical to the health and safety of inmates. A private conversation with one's counsel may be the only way those incarcerated are able to report instances of abuse or mistreatment. While in-person communication is ideal, that cannot always be arranged. This bill will protect access to meaningful legal representation when attorneys are unable to appear in person. With all of the changes in operation of state facilities following the COVID-19 pandemic effective and protected communication with legal counsel is of the utmost importance."

2) **Background**: The United States Constitution and the California Constitution guarantee the right to the assistance of an attorney for persons who are the subject of criminal prosecutions. The right to an attorney applies at the trial stage of a criminal proceeding and also during appeal. (*See e.g. Anders v. California* (1967) 386 U.S. 738, 741.) Communication with counsel is critical to the attorney-client relationship and necessary in order to provide adequate representation. For these reasons, denying an inmate access to use the telephone to call his or her attorney is unconstitutional in many circumstances. (*See e.g. Tucker v. Randall* (1991) 948 F.3d 388, 391.)

   In general, a person who is subject to a legal proceeding must disclose any matter or produce any writing, object or other thing requested of the person. There are exceptions which include the constitutional right not to incriminate oneself (U.S. Const., 5th Amend.; Pen. Code, §§ 930, 940) and confidential communications between persons with certain professional relationships, such as communications made between a lawyer and his or her client. The privileged communication between attorney and client is one of the oldest recognized privileges for confidential communications. (*See Swidler & Berlin v. United States* (1998)

524 U.S. 399, 403.) The purpose of the privilege is "intended to encourage 'full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice.'" (*Ibid., quoting Upjohn Co. v. United States* (1981) 449 U.S. 383, 389.) The privilege is such an intrinsic part of the legal system that the United States Supreme Court has ruled that the privilege continues to apply even after the death of the client. (*Id.* at 410-11.) Despite the legal significance of the attorney-client privilege, it has limitations. Most importantly for the purposes of this bill, the privilege is considered waived if a third party is present to hear the communication between attorney and client. (Evid. Code, § 912, subd. (a); *D.I. Charbourne, Inc. v. Super. Court of San Francisco* (1964) 60 Cal. 2d 723, 735.)

Existing law provides inmates the right to communicate confidentially with a member of the California State Bar. Penal Code Section 2601 specifically provides for such confidential communication. However, it appears that this statute is not also considered applicable to telephone calls. Per CDCR regulations, an inmate who wishes to conduct a confidential telephone call with an attorney must navigate the application process by which an attorney must be approved in order to conduct a confidential call with his or her client. Once that application is completed and approved, CDCR retains the authority to approve or deny confidential calls on a case-by-case basis. According to the proponent of this bill, there are certain facilities that categorically reject confidential telephone calls, requiring attorneys to either use mail for correspondence, visit in-person, or speak on the telephone while being monitored by CDCR staff. These options may not be ideal for attorneys and their clients. The use slow pace and on-sided nature of communication by mail is likely to prove inadequate for proper legal representation. Traveling to the facility for an in-person visit may range from inconvenient to impossible, depending on the distance to be traveled, the number of clients the attorney has, and where each one is located. Many CDCR facilities are located in remote parts of the State. (*See* CDCR Website Facility Locator Map: https://www.cdcr.ca.gov/facility-locator/). Finally, conducting a monitored telephone call is likely to destroy the attorney-client privilege (Evid. Code, § 912, subd. (a); *Charbourne, supra.*), thereby reducing the "broader public interests in the observance of law and the administration of justice" that the privilege is designed to protect. (*Upjohn, supra.*)

Federal regulations appear to provide for more robust confidential communications between inmates and their attorneys than does the State of California. Federal regulations specifically provide that "Staff may not monitor an inmate's properly placed call to an attorney." (United States Bureau of Prisons Program Statement, *Telephone Regulations for Inmates*, at p. 16, Feb. 4, 2002, available at: https://www.bop.gov/policy/progstat/5264_007.pdf [as of May 13, 2020].) Federal regulations further dictate that "The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate." (*Id.* at p. 17.)

This bill would require CDCR to provide inmates with confidential calls with their attorneys if the attorney' place of work is more than 75 miles away. The bill would also require that an inmate be given at least 30 minutes of confidential call time in those circumstances.

3) **COVID-19 Concerns**: COVID-19 poses a heightened danger to persons involved the criminal justice system as well as attorneys and staff. Jails and prisons make disease mitigation and prevention efforts virtually impossible when detention facilities are at or near capacity. Social distancing and sanitary practices are difficult in close quarters particularly when they lack a ready supply of personal protective equipment and rationed access to sanitary facilities. By their nature, detention facilities are generally designed in a manner to pack a large number of people into the smallest space possible to make them easy to secure and monitor. The spread of COVID-19 in jails and prisons poses a health risk to all Californians, starting first with the employees of jails and prisons, people who are incarcerated, their family members and others who visit them. The impacts reverberate through secondary institutions including law enforcement agencies and the judicial system.

   COVID-19 has exacerbated the state's already existing concerns with prison and jail overcrowding. In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that the California Department of Corrections and Rehabilitation (CDCR) was unable to provide inmates with constitutionally adequate healthcare. The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons.

   Due to the COIVD-19 pandemic, now may be a particularly appropriate time to consider expanding the use of confidential telephone calls. Doing so may reduce the number of people going into and out of CDCR facilities since attorneys who are located more than 75 miles away from the facility can call in rather than visiting in person. Furthermore, prisoners who are not being provided adequate access to healthcare, or who are being isolated for extended periods of time in an attempt to control the spread of COVID-19 may not feel comfortable disclosing the details of their situation on a monitored call. This bill may provide such inmates with the ability to address instances of neglect or abuse.

4) **Argument in Support**: According to the *California Public Defenders Association*, "Under current law, state prison inmates have a constitutional right to communicate privately with their attorneys. However, because many inmates are not housed in their home county, they are frequently held in prisons located hundreds of miles from their attorney's actual office, making in-person visitation difficult, if not impossible.

   "Even if an attorney is able to travel to a prison far away from their place of business, the current system places a burden on both the attorney (who must spend an entire day travelling for a single thirty minute interview) and on prison staff (who must spend time screening the attorney before entry to the prison). The need to reform the existing limitations on the attorney-client communication process in state prison is particularly evident given the current pandemic, because in-person visitation places attorneys, inmates, and staff at risk of infection.

   "AB 3043 addresses this problem by simply requiring prisons to permit short calls between inmates and their attorneys, provided that the attorney works more than 75 miles from the prison in which the inmate is housed."

5) **Argument in Opposition**: According to >

6) **Prior Legislation**:

a) SB 331 (Jackson) Chapter 178, Statutes of 2017, expanded the definition of a "domestic violence victim services organization" for purposes of the domestic violence victim-counselor evidentiary privilege.

b) SB 2040 (Morgan), Chapter 854, Statutes of 1986, established the domestic violence victim-counselor privilege.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

None

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