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 BY AUTHOR

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

PART II

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: David Billingsley

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

AB 1950 (Kamlager) – As Amended May 6, 2020

As Proposed to be Amended in Committee

SUMMARY: Specifies that a court may not impose a term of probation longer than two years for a felony conviction and one year for a misdemeanor conviction.

EXISTING LAW:

1) States that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year. (Pen. Code, § 19.2.)

2) 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).)

3) Defines "conditional sentence" as "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

4) States that courts shall have the power on misdemeanor convictions to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation on misdemeanor cases. (Pen. Code, § 1203a.)

5) Provides that a court has the power to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)

6) Specifies that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)

7) States that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)

8) States that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)

9) Provides that the court may in connection with imposing probation, do the following acts:

   a) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;

   b) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;

   c) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and as otherwise specified; and,

   d) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1-4).)

10) Requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)

11) Specifies that if a person is convicted driving under the influence and is granted probation, the terms and conditions of probation shall include a period of probation not less than three nor more than five years; provided, however, that if the maximum sentence provided for the offense may exceed five years in the state prison, the period during which the sentence may be suspended and terms of probation enforced may be for a longer period than three years but may not exceed the maximum time for which sentence of imprisonment may be pronounced. (Veh. Code, § 23600, subd. (b)(1).

12) Requires a person who is granted probation for a domestic violence crime, as specified to be placed on a minimum period of probation of 36 months, which may include a period of summary probation as appropriate. (Pen. Code, § 1203.097, subd. (a)(1).)

13) States that, except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code, S 1203, subd. (b).)

14) Provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned, shall suspend execution of a concluding portion of the term for a period mandatory supervision selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)

15) States that during the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B)).)

16) The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, 1202.7.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's adult supervised probation population is around 548,000 – the largest of any state in the nation, more than twice the size of the state's prison population, almost four times larger than its jail population and about six times larger than its parole population.

"A 2018 Justice Center of the Council of State Governments study found that a large portion of people violate probation and end up incarcerated as a result. The study revealed that 20 percent of prison admissions in California are the result of supervised probation violations, accounting for the estimated $2 billion spent annually by the state to incarcerate people for supervision violations. Eight percent of people incarcerated in a California prison are behind bars for supervised probation violations. Most violations are 'technical' and minor in nature, such as missing a drug rehab appointment or socializing with a friend who has a criminal record.

"Probation - originally meant to reduce recidivism - has instead become a pipeline for re-entry into the carceral system.

"Research by the California Budget & Policy Center shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision. Research also indicates that providing increased supervision and services earlier reduces an individual's likelihood to recidivate. A shorter term of probation, allowing for an increased emphasis on services, should lead to improved outcomes for both people on misdemeanor and felony probation while reducing the number of people on probation returning to incarceration.

"AB 1950 would restrict the period of adult probation for a misdemeanor to no longer than one year, and no longer than two years for a felony. In doing so, AB 1950 allows for the reinvestment of funding into supportive services for people on misdemeanor and felony probation rather than keeping this population on supervision for extended periods."

2) **Probation:** Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "Informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Sometimes a defendant on formal probation is moved to a "banked" caseload at the discretion of the probation officer if the probation officer concludes that the defendant presents a low risk. A defendant on a "banked" caseload has a lower level of contact with a probation officer than a defendant on regular supervision under formal probation. As a general proposition, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court.

When considering the imposition of probation, the court evaluates the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

When a defendant is convicted of a felony, the court may impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.) A probation term for a conviction of misdemeanor driving under the under influence (DUI) can be as long as five years. (Veh. Code, § 23600, subd. (b)(1).)

The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120. A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. Id. at 1121.

This bill would limit felony probation to two years and misdemeanor probation to one year, regardless of the maximum term of imprisonment. This bill does not amend code sections such as Veh. Code 23600 (allowing probation up to five years for a DUI) or Pen. Code 1203.097 (requiring a minimum probation of three years for domestic violence offenses) which specify probation lengths for specific crimes. It is not clear if this bill would limit the application of those sections.

3) **Probation Supervision:** Probation officers provide supervision of defendants on formal probation. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. Shortening the period of probation presents the possibility to provide more effective supervision of high risk offenders due to a more effective use of resources. Shorter probationary periods have the potential to result in more manageable caseloads and more effective supervision.

The American Probation and Parole Association (APPA) suggests a caseload of 50 probationers per probation officer for general (non-intensive) supervision of moderate and high risk offenders, and caseloads of 20 to 1 for intensive supervision.

(https://lao.ca.gov/2009/crim/Probation/probation_052909.pdf)

Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services. As stated above, most counties have implemented risk and needs assessments to assist in determining the level of supervision. However, since limited financial resources are an additional factor that influences the level of supervision counties are able to provide, probation chiefs must establish criteria to ensure that the most serious offenders are supervised. As of June 2013, nearly 50 percent of all offenders are high or medium risk, implying a need for higher level of supervision. However, the ratio of officers varies substantially between counties such that offenders who have been 0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100% PRCS MS Probation Figure 2: Risk to Recidivate as of June 2013, by Supervision Type High Risk Medium Risk Low Risk Other 5 "realigned", such as mandatory supervision and PRCS, are often on lower caseload sizes. Over their probation supervision period, an offender can move either direction on the supervision and risk level continuum, though the goal of probation interventions are to reduce risk. (https://www.cpoc.org/sites/main/files/file-attachments/updated_cpoc_adult_probation_business_model-_final.pdf?1501699521)

4) **Paradox of Probation:** A paper called *Paradox of Probation: Community Supervision in the Age of Mass Incarceration* discussed potential concerns that more and higher levels of probation supervision can lead increased involvement in the criminal justice system for the individuals being supervised on probation. (Michelle Phelps, March, 2013. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780417/)

"... the critical scholarly literature on probation, which initially emerged in response to the push for probation in the 1960s, argues that while probation might be intended as a more rehabilitative diversion from prison, in practice it often has the opposite effects. Rather than shifting borderline cases *down* from incarceration to probation, sociologists argued that expanding "alternative" sanctions like probation induced court actors to shift cases on the margin between sanctions with no supervisory component (such as community service, fines, or a warning) *up* to probation supervision—thus "widening the net" of carceral control. These studies found that diversion programs were used in those cases where prosecutors were unwilling or unable to secure a conviction for imprisonment and that incarceration rates increased when community corrections programs expanded." (Id.)

"This tradition goes on to argue that rather than being rehabilitative, the experience of probation can actually increase the probability of future incarceration—a phenomenon labeled 'back-end net-widening' Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers' everyday lives. In addition, the enhanced monitoring by probation officers (and in some cases, law enforcement as well) makes the detection of minor violations and offenses more likely."

If the fact that an individual is on probation can increase the likelihood that they will be taken back into custody for a probation violation that does not necessarily involve new criminal conduct, then shortening the period of supervision is a potential avenue to decrease individuals' involvement in the criminal justice system for minor infractions. However, it is

also possible that shortening the maximum probationary period might affect other aspects of how judges impose sentence. If judges do not have the ability to place an individual on probation for length of time they feel is necessary from a public safety and rehabilitative standpoint, it is possible that judges will be more likely sentence the defendant to a longer period of incarceration.

5) **Time Length of Probation:** Under the provisions of this bill, probation would be limited to two years for a felony and one year for a misdemeanor. That is true whether the individual is subject to formal supervision or informal supervision. Is one or two years a sufficient amount of time to meet the objectives of probation? Probation can include conditions which require the defendant to complete certain requirements such as drug, alcohol, or mental health treatment. Defendants might be required to complete domestic violence or other counseling.

Probation supervision can serve to connect defendants to community based organizations and resources which can provide support and assistance. Probation can help defendants connect to resources to assist with needs like housing and job training.

A two year period of supervision would likely provide a length of time that would be sufficient for a probationer to complete any counseling or treatment that is directed by a sentencing court. To the extent that a probationer is not complying with the treatment or counseling directed by the court during a probationary period, the court can revoke the defendant's probation until the defendant is back in compliance. The period while probation is revoked tolls the running of time towards the end point of the probationary period. That tolling process would effectively extend the probationary period for individuals that are not in compliance with the conditions of their probation.

A one year period of probation provides a very tight window for court supervision of many treatment options. Defendants convicted of domestic violence are required to complete 52 weeks of domestic violence counseling.(Pen. Code 1203.097.) Under AB 372 ( ), 2018, individuals convicted of domestic violence in specified counties can participate in alternative domestic violence counseling. Individuals are allowed three unexcused absences and have 18 months to complete the counseling. A one year period of misdemeanor probation would have some conflict with the existing probation requirements for a domestic violence conviction. Courts could potentially manage this by providing a gap between entry of a guilty plea and then sentencing date to provide a defendant time to start the domestic violence course prior to the time the defendant was actually placed on probation, it that is an awkward workaround.

Many probationers are not supervised and are on informal probation. Those individuals are not receiving any supervision from a probation officer and a lengthy period of probation can provide another basis for incarceration in the event of a new criminal offense, but otherwise provides no productive support or supervision for the probationer.

6) **Mandatory Supervision:** AB 109 (Committee on Budget) Chapter 15, Statutes of 2011 (Public Safety Realignment), reclassified many non-violent, non-serious felonies from having terms of custody in state prison to terms in the county jail. When a defendant if convicted on a realigned felony a court can sentence the defendant to a county jail sentence

up to one year impose probation. A judge also can impose a sentence up to the maximum allowed by the controlling statute and decide to split the time of the sentence between a period of county jail and a period of "mandatory supervision." Effectively, mandatory supervision functions like probation. A judge can impose conditions of mandatory supervision in the same way a judge could impose conditions of probation. Mandatory supervision is the responsibility of the county probation department. Violations of mandatory probation can be punished by further imprisonment in county jail. Most realigned felonies carry a maximum term of three years in the state prison, although there are some which can be punished for a longer period of time. Under existing law a judge can impose a period of mandatory supervision up to the maximum period of confinement for a realigned felony offense or felony offenses if a defendant is convicted of more than one realigned felony.

This bill does not affect the length of time a judge can impose for mandatory supervision.

7) **Governor's January Budget Proposal and May Revise:** The Governor's budget initially included a proposal to limit the length of time that defendant may be placed on probation. The proposal would have generally limited probation to two years and would have provided a new path to early termination of probation after a one year period. The proposal would have mandated probation supervision for a number of misdemeanor convictions currently only subject to probation supervision based on the discretion of the court. That would have increased the level of supervision for those misdemeanors, but they would still have been subject to the shortened time period for probation otherwise contained in the Governor's proposal.

The May Revise of the Governor's Budget Proposal was submitted on May 14, 2020. The Budget Proposal no longer includes limitations on the length of time for probation.

8) **Argument in Support**: According to the *California Public Defenders Association*, "Current law allows judges to impose a term of probation for up to three years on most misdemeanors, and for a period that exceeds three years for designated misdemeanors. Assembly Bill 1950 will amend California Penal Code sections 1203a and 1203.1 so that misdemeanor probation grants cannot exceed one year.

"According to California Penal code section 1203.4, individuals may only move to have their criminal conviction expunged if they are no longer on probation. An expungement pursuant to California Penal Code section 1203.4 results in a retroactive dismissal of the case. In this way, expungement is an important part of rehabilitation because it can help individuals pursue opportunities such as: 1) employment; 2) better-paying employment; 3) special licensing; and 4) higher education. Shortening the probation period will also decrease the amount of time that an individual must suffer for a prior misdeed, which has the added benefit of incentivizing compliance."

9) **Argument in Opposition:** According to the *California District Attorneys Association*, "A one-size-fits-all-approach to the length of probation takes away the judicial discretion and flexibility that is necessary to fashion an appropriate sentence. It also destroys proportionality in sentencing. A defendant who is convicted of multiple counts of armed robbery or attempted murder or sexual assault or vehicular manslaughter or a gang shooting or assault with a deadly weapon or battery with serious bodily injury but is granted probation

due to mitigating factors would have the same limit on probation as would a defendant convicted of one count of misdemeanor petty theft.

"Limiting probation hurts crime victims. A major part of rehabilitation is making amends through the payment of restitution, which is a constitutional right. In cases where a probationer owes thousands of dollars in restitution, in some cases millions of dollars, it is vital that probation be long enough in order to increase the likelihood that a crime victim is paid in full. In a number of cases, an offender is ordered to stay away from a particular person or place as a condition of probation. Crime victims depend on these orders. When probation terminates, these stay-away orders also terminate. Shortening probation periods shortens the protection of crime victims."

10) **Prior Legislation**:

a) SB 194 (Anderson), Legislative Session of 2017-2018, would have authorized a court to place the person on probation for a new period of probation that exceeds the statutory maximum when the order setting aside the judgment, the revocation of probation, or both was made before the expiration of the probationary period. AB 194 was held on the Senate Appropriation's Suspense File.

b) AB 2205 (Dodd), Legislative Session of 2015-2016, would have overturned a Supreme Court case holding that a court lacks jurisdiction to adjudicate violations of probation occurring after the original term of probation ends. AB 2205 was never heard in the Assembly Public Safety Committee.

c) AB 2477 (Patterson), Legislative Session of 2015-2016, would have overturned case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. AB 2477 failed passage in the Assembly Public Safety Committee.

d) AB 2339 (Quirk), Legislative Session of 2013-2014, would have required that all terms and conditions of supervision shall remain in effect during the time period that the running of the period of supervision is tolled. AB 2339 was never heard in the Assembly Public Safety Committee

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California Attorneys for Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
National Association of Social Workers, California Chapter
San Francisco Public Defender
Smart Justice California

Oppose

California District Attorneys Association
Chief Probation Officers of California
Los Angeles County Probation Officers Union, Afscme Local 685
Sacramento County Probation Association
State Coalition of Probation Organizations

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

Amended Mock-up for 2019-2020 AB-1950 (Kamlager (A))

Mock-up based on Version Number 98 - Amended Assembly 5/6/20
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 1203a of the Penal Code is amended to read:

1203a. In all counties and cities and counties, the courts therein, having jurisdiction to impose punishment in misdemeanor cases, may refer cases, demand reports, and to do and require anything necessary to carry out the purposes of Section 1203, insofar as that section applies to misdemeanors. The court may suspend the imposition or execution of the sentence and make and enforce the terms of probation for a period not to exceed one year.

SEC. 2. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding two years, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding ***the maximum time fixed by law in the case***. ~~two years.~~ The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a court or probation department in the form of cash or money order shall be forwarded to the victim within

30 days from the date the payment is received by the department. Any restitution payment received by a court or probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the court or probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of the probationer's dependents or to pay any fine imposed or reparation condition, to keep an account of the probationer's earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve their sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of the convicted person's maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons Control Law, as defined in Section 23500.

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Chapter 1 (commencing with Section 29610) of Division 9 of Title 4 of Part 6 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or their designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i) (1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and

change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(l) If the court orders restitution to be made to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of collection, but not to exceed 15 percent of the total amount ordered to be paid. The amount of the fee shall be set by the board of supervisors if it is collected by the county and the fee collected shall be paid into the general fund of the county treasury for the use and benefit of the county. The amount of the fee shall be set by the court if it is collected by the court and the fee collected shall be paid into the Trial Court Operations Fund or account established by Section 77009 of the Government Code for the use and benefit of the court.

Date of Hearing: May 19, 2020
Counsel: Matthew Fleming

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

AB 2481 (Lackey) – As Amended May 11, 2020

SUMMARY: Requires a law enforcement agency to submit sexual assault forensic evidence that was received prior to January 1, 2016 to a crime lab, and requires crime labs to process that kit and upload DNA profiles to the Combined DNA Index System (CODIS). Specifically, **this bill**:

1) Requires law enforcement agencies to submit sexual assault forensic evidence that was received prior to January 1, 2016 to a crime lab on or before January 31, 2022.

2) Requires crime labs to process sexual assault forensic evidence kits that was received by a law enforcement agency prior to January 1, 2016 on or before January 31, 2023.

3) Specifies that if a sexual assault kit would not be eligible for uploading qualifying DNA profiles into COIDS, pursuant to state and federal regulations, the crime lab is not required to process the evidence kit.

4) Specifies that if a victim of crime from whom a sexual assault evidence kit was collected prior to January 1, 2016, notifies the law enforcement agency or the crime lab that the victim does not want the kit tested, the crime lab is not required to test the kit.

EXISTING LAW:

1) Provides that in order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required and to ensure the longest possible statute of limitations for sex offenses the following shall occur:

   a) A law enforcement agency in whose jurisdiction a specified sex offense occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

      i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence; and

      ii) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

   b) The crime lab shall do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:

i) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence; or

ii) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified. (Pen. Code, § 680, subds. (b)(7)(A) and (B).)

2) Specifies that crime labs do not need to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. (Pen. Code, § 680, subd. (b)(7)(C).)

3) Specifies that a DNA profile need not be uploaded into CODIS if it does not meet the federal guidelines. (Pen. Code, § 680, subd. (b)(7)(D).)

4) Defines "rapid turnaround DNA program" as a program for training of sexual assault team personnel in the selection of a representative samples of forensic evidence from the victim to be the best evidence based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based. (Pen. Code, § 680, subd. (c)(2)(5).)

8) Establishes the Sexual Assault Victims' DNA Bill of Rights which provides victims of sexual assault with the following rights:

a) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case;

b) The right to be informed whether or not the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence has been entered into the Department of Justice (DOJ) Data Bank of case evidence; and,

c) The right to be informed whether or not there is a match between the DNA profile of the assailant developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the DOJ Convicted Offender DNA Data Base, provided that disclosure would not impede or compromise an ongoing investigation. (Pen. Code § 680 (c)(2).)

5) Provides that upon the request of a sexual assault victim, the law enforcement agency investigation of a specified sex offense shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence form the victim's case. (Penal Code § 680 (c)(1).)

6) Requires the following persons to provide buccal swab samples (DNA), right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological

samples, as required by law, for law enforcement identification analysis:

a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated for committing any felony offense in juvenile court;

b) Any adult person who is arrested for or charged with any of the following felony offenses:

   i) Any felony offense specified or attempt to commit any felony offense that imposes upon a person the duty to register in California as a sex offender;

   ii) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter;

   iii) Any adult person arrested or charged with any felony offense; and,

c) Any person, including any juvenile, who is required to register in California as a sex offender or arsonist because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense. (Pen. Code § 296, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It's completely unacceptable that professionals entrusted with potentially pivotal and sacred evidence have failed to follow through. The current backlog illustrates that we are not committed to helping victims of rape. The rape kit backlog has allowed countless predators to go free and continue their attacks. This bill will ensure California goes after these criminals with every tool available and delivers justice to victims of sexual assault."

2) **Sexual Assault Kits and Combined DNA Index System (CODIS)**: After a sexual assault has occurred, victims of the crime may choose to be seen by a medical professional, who then conducts an examination to collect any possible biological evidence left by the perpetrator. To collect forensic evidence, many jurisdictions provide what is called a "sexual assault kit." Sexual assault kits often contain a range of scientific instruments designed to collect forensic evidence such as swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers. The composition of sexual assault kits vary depending on jurisdiction. For example, according to a report from 2011, the police and sheriff's department in Los Angeles use identically arranged sexual assault kits, however, the rest of California does not. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, May 2011, at page 2, available at: https://www.ncjrs.gov/pdffiles1/nij/233279.pdf, [as of Mar. 13, 2020].)

   Analyzing forensic evidence from sexual assault kits assists in linking the perpetrator to the sexual assault. Generally, once a hospital or clinic has conducted a sexual assault kit

examination, it transfers the kit to a local law enforcement agency. From there, the law enforcement agency may send the kit to a forensic laboratory. Evidence collected from a kit can be analyzed by crime laboratories and could provide the DNA profile of the offender. Once law enforcement authorities have that genetic profile, they could then upload the information onto CODIS.

Created by the FBI in 1990, CODIS is a national database that stores the genetic profiles of sexual assault offenders onto a software program. By exchanging, testing, and comparing genetic profiles through CODIS, law enforcement agencies can discover the name of an unknown suspect who was in the system or link together cases that still have an unknown offender. The efficacy of CODIS depends on the volume of genetic profiles that law enforcement agencies submit. (FBI website, Combined DNA Index System (CODIS), available at: https://www.fbi.gov/services/laboratory/biometric-analysis/codis,[as of June 6, 2019].) At present, more than 190 law enforcement agencies use CODIS. (*Id.*)

3) **Mandatory Testing of Sexual Assault Evidence Kits**: Last year, the Legislature passed SB 22 (Leyva) Chapter 588, Statutes of 2019. That bill required law enforcement agencies to submit all sexual assault forensic evidence to a crime lab and required crime labs to either process the evidence for DNA profiles and upload them to CODIS. SB 22 applies to all sexual assault evidence that was received on or after January 1, 2016. Prior to the passage of SB 22, California law encouraged, but did not require any agency to send a sexual assault kit to a crime lab. This bill would require sexual assault evidence kits that were received prior to January 1, 2016 are also sent to a crime lab and tested.

4) **Audits on Untested Kits**: There are a number of reasons why law enforcement authorities do not submit a kit to a crime lab. For example, identity of the suspect may never have been at issue. Often times, whether or not the victim consented to the sexual activity is the most important issue in the case, not the identity of the suspect. In other cases, charges may be dropped for a variety for reasons, or a guilty plea may be entered rendering further investigation moot. (NIJ, *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, May 2011, at page 3, available at: https://www.ncjrs.gov/pdffiles1/nij/233279.pdf, [as of May 11, 2020].)

Despite a variety of reasons why law enforcement may not have a kit tested, a 2014 report by the California State Auditor found that law enforcement rarely documents reasons for not analyzing sexual assault evidence kits. (State Auditor, Sexual Assault Evidence Kits, Oct. 2014, at page 17, available at: https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf, [as of May 11, 2020].) Specifically, the report found that "[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed." (Iid. at 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The "decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify

any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors." (*Id.*)

Although the audit found the explanations for not submitting the sexual assault kits to be reasonable, testing those kits may have identified offenders who had committed another crime for which they were never previously identified. The National Institute of Justice funded Detroit, Michigan and Houston, Texas to test their unsubmitted sexual assault kits. The results revealed that testing unsubmitted kits can lead to convicting hundreds to thousands of serial offenders; such testing identified over 400 serial rapists in Detroit alone. (NIJ, National Sexual Assault Kit Initiative (SAKI): FY 2017 Competitive Grant Announcement, Dec. 20, 2016, available at: https://www.bja.gov/funding/SAKI17.pdf [as of May 11, 2020].)

AB 3118 (Chiu) Chapter 950, Statutes of 2018 required each law enforcement agency, crime lab, medical facility, or other facility in possession of sexual assault kits to conduct an audit of all the kits in their possession and report specified information about them to the DOJ. In turn, the DOJ is required to compile the information and submit a report to the Legislature. The information to be audited includes the date when the kits were collected, whether they were tested by a crime lab, whether the information from the test was uploaded to CODIS, etc. DOJ's report is due to the Legislature in July, 2020. The information in that audit may be useful in shaping the policy contemplated by this bill.

5) **Arguments in Support**:

a) According to the bill's sponsor, the *Alameda District Attorney*: "In my own county, several years back I embarked on the task of identifying all untested SAKs. We discovered that 1,900 untested SAKs sitting in police evidence rooms. Today, there are no untested SAKs, including the 1,900. Many of those SAKs produced a DNA profile linked to the perpetrator which has now been uploaded into the California database and CODIS. We now have a process to test all SAKs in Alameda County.

"We ask victim~survivors of sexual assault to consent to a forensic examination. They essentially submit their bodies to be examined in a manner well beyond a medical exam. Victims fully expect that, after that ordeal, the SAKs will be analyzed. DNA is an amazing forensic tool allowing law enforcement to solve crimes and convict criminals, especially serial offenders. Untested SAKs mean lost opportunities to develop DNA profiles, search for matches, link cold cases, prosecute offenders, and exonerate those wrongly accused or prosecuted. By testing SAKs, we have the opportunity to bring resolution and justice for sexual assault victim~survivors and prevent sexual assault crimes by serial sex offenders."

b) According to the *Joyful Heart Foundation*: "Every 73 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination- which may take four to six hours- to collect evidence left behind by the attacker in what is commonly called a rape kit. Survivors expect that their rape kits will be tested. The public expects the same.

"DNA evidence is a powerful law enforcement tool. When tested, rape kit evidence can identify unknown assailants, link crime scenes together, reveal serial offenders, and exonerate the wrongfully convicted. Too often, however, these rape kits languish untested for years—even decades—in storage facilities. While these kits sit on shelves, dangerous offenders remain free on the streets and survivors wait for justice.

"[] A. B. 2481 would change this by mandating all rape kits collected prior to January 1, 2016 to be submitted to crime labs and tested by January 31, 2022. Testing of old kits will bring justice to survivors who have been waiting for years—some decades, exonerate the wrongfully convicted, and ensure public safety by taking dangerous offenders off the streets. The bill would also send a powerful message to survivors that they—and their cases—matter. Testing every kit also sends a message to perpetrators that law enforcement will employ every available tool to apprehend and prosecute them.

"In the last decade, communities across the country have discovered thousands of backlogged kits in storage and taken action. So far, testing backlogged rape kits in three large cities— Cleveland, Detroit, and Memphis—has resulted in the identification of over 1,300 suspected serial rapists. These serial offenders have been connected to crimes across at least 40 states and Washington, D.C. Serial rapists have been uncovered in many other cities, including in Duluth, MN, Portland, OR, Wilmington, DE and Virginia Beach, VA. In addition, recent research has found that rapists are also serial offenders who commit all kinds of crime from burglary to domestic violence to homicide."

c) According to *National Association of Social Workers*: "Initially, DNA testing only occurred when the police department ordered that a kit be analyzed for evidence. The untested rape kits created a backlog, as they were collected but failed to be tested.

"The Accountability Project has identified a partial count of the untested rape kits in California: 13,615. The DNA results from these rape kits could assist in identifying serial rapists and resolve longstanding sex crimes. These results may also provide peace of mind for victims that fear or know their rapists are living unencumbered by justice.

"Adjudication of sex crimes is of the upmost importance because it allows victims to begin their recovery process without constant fear of being exposed to their attacker. Exposure can trigger the post-traumatic stress that many victims endure after being assaulted. This legislation will effectively eliminate the backlog of untested rape kits in the state of California. This legislation ensures that law enforcement assisting victims will be able to analyze the situation with the most readily available data."

6) **Argument in Opposition**: According to the *California Public Defenders Association*: "If enacted, AB 2481 would require crime laboratories analyze all sexual assault kits received prior to January 1, 2016 [] regardless of whether the DNA is necessary to a prosecution, regardless of whether the suspect has already pled guilty and regardless of whether there are items of evidence from other types of cases, the results of which are necessary for a successful prosecution, that will not be tested because the lab's resources will be devoted to testing of sexual assault evidence. This bill, if passed, will be an unfunded mandate, the cost of which will need to be reimbursed by the state.

"How crime laboratories allocate limited resources should not be micromanaged by the state legislature. While the testing of DNA evidence from sexual assault cases is important, it is not more important than DNA testing on items of evidence collected in the investigation of other types of violent crime such as homicides, kidnapping or assaults.

"This is a poorly conceived bill. Crime laboratories in this state should be permitted to prioritize their work with the guidance from prosecutors. The state legislature should not be in the business of prioritizing a crime lab's workload. Additionally, the state should not be throwing money away to ensure evidence from one type of case is tested first regardless of the import of the evidence to a criminal prosecution."

7) **Prior Legislation**:

a) SB 22 (Leyva) Chapter 588, Statutes of 2019, required law enforcement agencies to either submit sexual assault forensic evidence to a crime lab or ensure that a rapid turnaround DNA program is in place, and required crime labs to either process the evidence for DNA profiles and upload them into the Combined DNA Index System (CODIS) or transmit the evidence to another crime lab for processing and uploading.

b) AB 3118 (Chiu), Chapter 950, Statutes of 2018, required each law enforcement agency, crime lab, medical facility, or any other facility that possesses sexual assault evidence kits to conduct an audit of all kits in their possession and report the findings to the DOJ, who is then required to submit a report to the Legislature.

c) AB 41 (Chiu), Chapter 694, Statutes of 2017, required all local law enforcement agencies investigating a case involving sexual assault to input specified information relating to the administration of a sexual assault kit into the DOJ's SAFE-T database within 120 days of collection. It also required public laboratories to input an explanation onto SAFE-T if they had not completed DNA testing of a sexual assault kit within 120 days of acquiring the kit.

d) AB 1312 (Gonzalez Fletcher), Chapter 692, Statutes of 2017, required law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights. Provides additional rights to sexual assault victims, and mandates law enforcement and crime labs to complete tasks related to rape kit evidence.

e) AB 1848 (Chiu), of the 2015-2016 Legislative Session, would have required local law enforcement agencies to conduct an audit of sexual assault kits collected during a period of time, as specified by the DOJ, and to submit data regarding the total number of kits, the amount of kits submitted for DNA testing, the amount not submitted and other information, as specified. AB 1848 was held in the Senate Appropriations Committee.

f) AB 2499 (Maienschein), Chapter 884, Statutes of 2016, required the DOJ to, in consultation with law enforcement agencies and crime victims groups, establish a process giving location and other information to victims of sexual assault upon inquiry.

g) SB 1079 (Glazer), of the 2015-2016 Legislative Session, would have required the DOJ to maintain a restricted access repository for tracking DNA database hits that local law enforcement agencies could use to share investigative information. SB 1079 was held in

the Senate Appropriations Committee.

h) AB 1517 (Skinner), Chapter 874, Statutes of 2014, provided preferred timelines that law enforcement agencies and crime labs should follow when dealing with sexual assault forensic evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
Crime Victims United of California
Joyful Heart Foundation
National Association of Social Workers, California Chapter

Oppose

California Public Defenders Association

Analysis Prepared by: Matthew Fleming / 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 2833 (Lackey) – As Introduced February 20, 2020

SUMMARY: Revises the written notice that law enforcement officers furnish to victims at the scene of a domestic violence incident, requires the Commission on Peace Officers Standards and Training (POST) to develop training on the issuance of such notices, and requires the Office of Emergency Services (OES) to develop a model Victims of Domestic Violence card that provides the written notice. Specifically, **this bill**:

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

2) Adds the following information to the written notice that law enforcement officers furnish to victims at the scene of a domestic violence incident and requires that written notice to be a distinct color from the general victim's rights card:

   a) The phone numbers and county hotlines for domestic violence shelters and counseling and if the list of domestic violence agencies is voluminous, allows the written notice to include an internet website or telephone number where the full listing may be accessed;

   b) The statutory definitions for domestic violence, as specified;

   c) The statute of limitations for domestic violence crimes;

   d) A notation that the OES internet website contains additional information about domestic violence, including information about how to file for a restraining or protective order and information on filing civil suits related to domestic violence;

   e) The internet website for the OES website that provides information to assist victims of domestic violence with domestic violence law, the dynamics of victimization, and resources available to survivors of domestic violence;

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

   g) A disclaimer in at least 10-point type that states:

      "PLEASE NOTE THAT THIS INFORMATION IS PROVIDED IN AN ATTEMPT TO ASSIST THE VICTIM OF DOMESTIC VIOLENCE BY NOTIFYING THE VICTIM ABOUT SOME, BUT NOT NECESSARILY ALL, SERVICES AVAILABLE TO THE VICTIM; THE PROVISION OF THIS INFORMATION AND THE INFORMATION

CONTAINED THEREIN IS NOT LEGAL ADVICE AND IS NOT INTENDED TO CONSTITUTE A GUARANTEE OF ANY VICTIM'S RIGHTS OR A VICTIM'S ELIGIBILITY OR ENTITLEMENT TO ANY SPECIFIC BENEFITS OR SERVICES."

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

4) Requires OES to post on an internet website information to assist victims of domestic violence with domestic violence law, the dynamics of victimization, and resources available to survivors of domestic violence, which includes, at a minimum, the following:

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

   b) Information regarding domestic violence shelter services available by county that includes, at a minimum, information about the shelter's policy on accepting victims with children, pets, or both, and any applicable limitations;

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

   d) Information about how to file a criminal complaint;

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

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

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

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

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

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

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

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

   m) Dynamics of domestic violence;

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

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

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

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

5) Allows OES to include on the internet website, in addition to the textual information required, embedded video features that discuss the information described on the website, including advice on how to safely escape a violent relationship, survivors' stories, or a combination of those topics.

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

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

8) Requires OES to ensure that the information on the internet website is accurate and updated not less than once per year.

9) Requires OES to encourage district attorneys' offices, county social service agencies, and state and local law enforcement agencies to provide links to the internet website established pursuant to this section on their internet websites.

10) Requires OES to develop a model Victims of Domestic Violence card that can be modified by cities and counties in compliance with the requirements.

11) Delays operation of these provisions until January 1, 2022.

EXISTING LAW:

1) Requires POST to implement a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and shall also develop guidelines for law enforcement response to domestic violence. (Pen. Code § 13519, subd. (a).)

2) Requires the course of basic training for law enforcement officers in the handling of domestic violence complaints to include adequate instruction in specified procedures and techniques. (Pen. Code, § 13519, subd. (c).)

3) Requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls. (Pen. Code, § 13701, subd. (a).)

4) Requires the policies to be in writing and, available to the public upon request, and include specified standards. (Pen. Code, § 13701, subd. (c).)

5) Requires law enforcement officers to furnish written notice to victims at the scene of a domestic violence incident, including, but not limited to, all of the following information:

   a) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time;

   b) A statement that, "For further information about a shelter you may contact ____;"

   c) A statement that, "For information about other services in the community, where available, you may contact ____;"

   d) A statement that, "For information about the California Victims' Compensation Program, you may contact 1-800-777-9229;"

   e) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint;

   f) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

      i) An order restraining the attacker from abusing the victim and other family members;

      ii) An order directing the attacker to leave the household;

      iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim;

      iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children;

      v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim;

      vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so;

      vii) An order directing the defendant to make specified debit payments coming due while the order is in effect; and,

      viii) An order directing that either or both parties participate in counseling.

g) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim;

h) In the case of an alleged violation of specified offenses, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

i) A statement informing the victim that strangulation may cause internal injuries and encouraging the victim to seek medical attention.

6) Requires that, whenever there has been a crime committed against a victim, the law enforcement officer assigned to the case may provide the victim of the crime with a "Victim's Rights Card," provided that the city or county where the crime took place has adopted a resolution by the city council or board of supervisors to that effect. (Pen. Code, § 679.08, subd. (a).)

7) Provides that a "Victim's Rights Card" means a card or paper that provides a printed notice with a disclaimer, in at least 10-point type, to a victim of a crime regarding potential services that may be available under existing state law to assist the victim. The printed notice shall include the following language or language substantially similar to the following:

a) "California law provides crime victims with important rights. If you are a victim of crime, you may be entitled to the assistance of a victim advocate who can answer many of the questions you might have about the criminal justice system."

"Victim advocates can assist you with the following:

i) Explaining what information you are entitled to receive while criminal proceedings are pending;

ii) Assisting you in applying for restitution to compensate you for crime-related losses;

iii) Communicating with the prosecution;

iv) Assisting you in receiving victim support services; and,

v) Helping you prepare a victim impact statement before an offender is sentenced"

"To speak with a victim advocate, please call any of the following numbers:"

[Set forth the name and phone number, including area code, of all victim advocate agencies in the local jurisdiction]

"PLEASE NOTE THAT THIS INFORMATION IS PROVIDED IN AN ATTEMPT TO ASSIST THE VICTIM, BY NOTIFYING THE VICTIM ABOUT SOME, BUT NOT NECESSARILY ALL, SERVICES AVAILABLE TO THE VICTIM; THE PROVISION OF THIS INFORMATION AND THE INFORMATION CONTAINED THEREIN IS NOT LEGAL ADVICE AND IS NOT INTENDED TO CONSTITUTE A GUARANTEE OF ANY VICTIM'S RIGHTS OR OF A VICTIM'S ELIGIBILITY OR ENTITLEMENT TO ANY SPECIFIC BENEFITS OR SERVICES." (Pen. Code, § 679.08, subd. (b).)

8) Specifies that act or omission of furnishing written notice to victims constitutes a discretionary act for which there is no liability for an injury resulting from that act or omission. (Pen. Code, § 679.08, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Understanding the complexities of California domestic violence law and the services that are available can be a challenge to victims. Some information is available online, but it is scattered on multiple sites. A general internet search with terms like ('California' 'domestic violence' 'rights') will often steer the person to attorney webpages, to sites recommending the person contact an attorney, or to sites that provide minimal information with a help line number to call. In addition, these websites are almost exclusively in English; and Google Translate is unreliable. Victims, particularly those who have not yet interacted with law enforcement, may want to research what their rights are, how to access services, and the best way to escape from their abusers but may not yet be prepared to speak with another person.

"AB 2833 empowers victims of domestic violence to break out of their abusive situations. In some cases, abusive situations can escalate rapidly and time becomes precious. This website provides an efficient one-stop shop for individuals seeking information on their rights and available services."

2) **Domestic Violence Victim Resources**: There are a variety of state and national services that are available to support victims of domestic violence. Contact information is collected for those resources in several places. For example, the California Victim Compensation Board (CalVCB) provides the phone number for the national hotline for domestic violence and dating abuse and several other services. (CalVCB website, available at:

https://victims.ca.gov/resources.aspx#dv, [as of Mar. 16, 2020].) The website for the California Partnership to End Domestic Violence has additional resources. (https://www.cpedv.org/national-and-state-links, [as of Mar. 16, 2020].) Still others can be found at the National Domestic Hotline website. (https://www.thehotline.org/resources/ [as of Mar. 16, 2020].) In addition, the McGeorge School of Law has an informational website that includes a searchable database of available resources in a particular zip code or county. (https://1800victims.org/crime-type/domestic-violence/ [as of May 13, 2020].) Most of these resources are in English, and some have the option to display in Spanish.

The purpose of this bill is to help ensure that domestic violence victims are aware of their rights and resources and how they can access them. Current law requires the provision of written notice to domestic violence victims. According to the author, the States mandate to provide these cards has been suspended. This bill would update and expand that notice by requiring it to be printed in languages other than English, including information such as the definition of domestic violence and the statute of limitations for domestic violence offenses, and providing the phone numbers for shelters and counseling services. In addition, the bill would require POST to include the furnishing of domestic violence victim cards in its course of basic training and would require the OES create a website with victim resources and model card that can be adopted and modified by local law enforcement agencies.

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

The course of training covers the following procedures and techniques:

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

- Cite and release policies.
- Emergency assistance to victims and how to assist victims in pursuing criminal justice options. (Pen. Code, § 13519, subd. (c).)

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

4) **Argument in Support**: According to the *Los Angeles District Attorney's Office*: "Understanding the complexities of California domestic violence law and the services that are available can be a challenge to victims. Some information is available online, but it is scattered on multiple sites. A general internet search with terms like ("California" "domestic violence" "rights") will often steer the person to attorney web pages, to sites recommending the person contact an attorney, or to sites that provide minimal information with a help line number to call.

"To provide more useful information about domestic violence and the services available to victims of domestic violence, AB 2833 would update the existing written information that law enforcement officers are required to provide to victims of domestic violence. AB 2833 would require, in addition to the information required under existing law, the notice to victims of domestic violence be in at least the five most commonly spoken languages in that county and include: the statute of limitation for domestic violence; the website for the Office of Emergency Services' (OES) domestic violence information; and contact information for additional assistance, including the National Domestic Violence hotline.

"AB 2833 would also create a website, operated by the OES, containing more comprehensive information for victims of domestic violence, including victims who have not yet interacted with law enforcement officers."

5) **Prior Legislation**:

a) SB 273 (Rubio) Chapter 546, Statutes of 2019, extended the statute of limitations for felony domestic violence from three years to five years, and made changes to domestic violence training for peace officers.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California Partnership to End Domestic Violence
Crime Victims United of California
Los Angeles County District Attorney's Office

Opposition

None

Analysis Prepared by: Matthew Fleming / 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 2342 (McCarty) – As Amended May 4, 2020

SUMMARY: Reduces the early-discharge eligibility time line for specified parolees and persons on postrelease community supervision (PRCS), and creates a program through which parolees are able to earn "reintegration credits" to reduce the term of parole. Specifically, **this bill**:

1) Requires any person, except those imprisoned for an offense requiring registration as a sex offender, who have been on parole continuously for 180 days and during that time have not committed any new offenses or violated the terms or conditions of parole, to be discharged within 30 days, unless the person does not consent to discharge, or unless the California Department of Corrections Recommends (CDCR) and Board of Parole Hearings (BPH) determines there is good cause, as specified, for the person to be retained.

2) Requires that if a person is retained on parole, CDCR shall, within 30 days after the decision to retain the person, provide the person with a written explanation of its recommendation to the BPH. CDCR shall also adopt a written parole supervision plan to address the person's behaviors that contributed to the finding of good cause and provide the person with the support and interventions needed to reduce the future risk of offending. Interventions may include counseling and vocational training.

3) Requires that if a person is retained on parole, has been on parole continuously for any subsequent 180 days following a prior decision to retain the person on parole, and has not committed any new offenses or violated the terms or conditions of parole during this 180 days, the person shall, within 30 days, be discharged from parole, unless the person does not consent to discharge, or unless CDCR recommends and BPH determines there is good cause, as specified, for the person to be retained.

4) Requires that if a person is retained on parole, CDCR shall, within 30 days after the decision to retain the person, provide the person with a written explanation of its recommendation to BPH. CDCR shall also create a written plan describing the relevant community-based support and services that are reasonably available to the person on parole and how the department will help connect the person to those supports and services.

5) Specifies that notwithstanding awarded reintegration credits, as specified, a person shall not be discharged from parole before serving at least 180 days on parole.

6) Requires CDCR to on or before January 31, 2022, and annually thereafter, prepare and submit a report to the Legislature on the impact of this program on lowering recidivism and other positive outcomes for formerly incarcerated persons. The report shall also describe the measures CDCR has taken, as specified, to reduce rates of recidivism through improvements to supervision and supportive services.

7) Specifies that the number of persons on parole under the supervision of a single parole agent not exceed 40.

8) Defines good cause as existing when CDCR or BPH identifies one or more documented and verifiable behaviors, actions, or omissions by a parolee that reasonably and persuasively suggest that the person poses an unacceptable risk for committing a serious or violent offense if presently discharged from parole.

9) Specifies that new offense or violation of the terms and conditions of parole does not include an offense that results in a custodial sanction of less than 10 consecutive days, unless the offense indicates that the parolee poses an unreasonable risk of danger to public safety absent continued supervision as supported by objective and verifiable evidence.

10) Provides that if CDCR or its agent discovers any sentencing error, it shall be disclosed directly to the court and to the inmate or person on parole in writing immediately.

11) Entitles parolees serving a determinate period of parole to earn reintegration credits to reduce the length of parole.

12) Allows a parolee subject to lifetime parole to earn reintegration credits to advance the date of his or her discharge review.

13) Awards reintegration credits for the completion of an accredited academic program or course, as follows:

    a) Twelve months of credit for a general equivalency high school diploma;

    b) Twelve months of credit for an associate's degree;

    c) Twelve months of credit for a bachelor's degree; and,

    d) Six weeks of credit for the completion of any quarter, trimester, or semester-long course taken towards an academic degree for which a passing grade was received and for which credit was not awarded for the completion of a degree.

14) Defines "accredited" as meaning "that the program or course is accredited by an accrediting agency recognized by the United States Department of Education or the State of California."

15) Specifies that reintegration credits may be awarded for academic achievements commenced during the individual's term of incarceration but completed while on parole.

16) Awards reintegration credits for other specified activities as follows:

    a) Six months of credit for the completion of a certified career or technical education or training program or certificate, as specified;

    b) Two months of credit for the completion of a cognitive behavioral treatment program;

c) Three months of credit for the completion of a substance abuse treatment program or residential treatment program that is not court-ordered; and,

d) Ten days of credit per month for the completion of a minimum of 12 voluntary service hours per month.

17) Specifies that reintegration credits shall not be awarded for the completion of any counseling or treatment that the person is required to complete pursuant to court order.

18) Defines "voluntary service" for purposes of these provisions as "any time spent volunteering for a nonprofit or government agency, including time spent visiting prisons, jails, or juvenile detention facilities. Any volunteer activity shall be approved by a parole agent and documented by a site supervisor in a manner prescribed by the department."

19) Provides that reintegration credits earned during the 12-month period before each annual review shall be awarded at the annual review. CDCR shall then reduce the parole period by the amount of reintegration credits awarded. Once awarded, earned credits shall not be revoked and may not be waived by any court, parolee, or other government agency.

20) Gives the parole officer discretion to deny credits that have been earned, but not yet awarded at an annual review hearing, but only if the parolee has had a new arrest or parole violation during that 12-month period.

21) States that if no other credits are earned in the 12-month period before the annual review, a parolee may earn 15 days of credit per month for remaining free of any new arrests or parole violations.

22) Limits the awarding of reintegration credits to no more than 12 months of credit during a 12-month period.

23) Requires reintegration credits to be awarded retroactively, as specified.

24) Allows a parolee who successfully earns any amount of reintegration credits to have their radius of restricted travel increased at each annual review, as specified, except as prohibited by law and subject to the approval of the parole officer.

25) Requires CDCR and the BPH to adopt any regulations necessary to carry out these provisions.

26) Requires CDCR to prepare and submit a report to the Legislature, on or before January 31, 2022, and annually thereafter, regarding the success of the reintegration credit program, as specified.

27) Requires a person who has been on PRCS for 180 days with no new offenses or violation of the conditions of PRSC during the 180 days since release that result in a custodial sanction be discharged from supervision immediately.

28) Prohibits, as a condition of continued state funding, any entity that receives state funds and provides services and programs in the fields of education, job training, workforce placement,

health, or housing, from denying access to services or programs to a person on the basis that the person is currently or previously has been on parole or PRCS.

29) States that the ability to earn conduct credits cannot be waived by the sentencing court or by the defendant as part of a plea agreement.

EXISTING LAW:

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

2) 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 (c)):

   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.

3) Requires all other offenders released from prison to be placed on PRCS under the supervision of a county agency, such as a probation department. (Pen. Code, § 3000.08, subd. (b).)

4) 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.)

5) Establishes parole-term lengths depending on the committing offense and the date the offense is committed. (Pen. Code, §§ 3000, subd. (b)(1)-(6), 3000.1.)

6) Entitles a parolee to an annual review hearing until the statutory maximum period of parole expires. (Pen. Code, § 3001, subd. (d.)

7) Provides for the opportunity for early discharge from parole for parolees after a certain period of continuously-successful parole, depending on the circumstances of the offense and the length of the parole period. For example (Pen. Code, § 3001):

a) Requires that specified persons who have been released on parole who were not imprisoned for a violent felony, a serious felony, or an offense requiring registration as a sex offender, and who have been on parole for a period of 6 months, be discharged from parole within 30 days unless BPH, for good cause, determines the person should be retained; or

b) Requires specified persons who have been released on parole who were imprisoned for a serious felony or an offense requiring registration as a sex offender, and who have been on parole continuously for one year since release from confinement, to be similarly discharged from parole; or

c) Requires that specified persons who have been released on parole from state prison who were imprisoned for a violent felony, and who have been released on parole for a period not exceeding 3 years and have been on parole continuously for 2 years since release from confinement, or who have been released on parole for a period not exceeding 5 years and have been on parole continuously for 3 years since release from confinement, be similarly discharged from parole.

8) Provides that an inmate who has committed specified crimes and is released on parole shall not be returned to a location within 35 miles of the residence of a victim or witness if the victim or witness makes such a request and the BPH finds that the placement is necessary to protect the victim or witness. (Pen. Code, § 3003, subds. (f) & (h).)

9) Triggers suspension of the period of parole if a parolee absconds. (Pen. Code, §§ 3000, subd. (b)(6) & 3064.)

10) Provides that any person who has been on PRCS continuously for six consecutive months without any violations of conditions of release that result in a custodial sanction may be considered for immediate discharge. (Pen. Code, § 3456, subd. (a)(2).)

11) Provides that any person who has been on PRCS continuously for one year without any violations of conditions of release that result in a custodial sanction shall be discharged from supervision within 30 days. (Pen. Code, § 3456, subd. (a)(3).)

12) Grants certain conduct credits against a person's sentence that may be earned by persons who are incarcerated, as specified. (Pen. Code, §§ 2933, 4019.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2342 adopts nationwide best practices to improve how someone is supervised within the state's parole system. It is rooted in the understanding that the principle objective of post-incarceration supervision is to coordinate, manage, encourage and facilitate the successful reintegration of persons on parole. Parole is intended to be guided supervision for a successful re-entry and this will be essential as folks are sent home due to the novel coronavirus. California is granting early release to 3,500 folks in an effort to reduce crowding as infections begin spreading through the state prison system. This pandemic will continue to force us to reevaluate our prison overcrowding. Current law

allows certain persons on parole to be eligible for discharge from parole after their first 180 successful days; this bill expands the opportunity for early discharge to a broader population of persons on parole.

"This bill encourages people on parole to reach their full potential by incentivizing good behavior, educational attainments and community service. For far too long we have had a punishment approach to all who have paid their dues to society and are trying to re-enter their communities. Formerly incarcerated have to jump through employment and housing hurdles, incentivizing people on parole to reach their educational potential can only ease reintegration. This legislation is taking into consideration all who have served their time and are ready to be productive members of society."

2) **Changes to Parole Supervision As a Result of Criminal Justice Realignment**: 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 local 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; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a) and (c), and 3451, subd. (b).) All other inmates released from prison are subject to up to three years of PRCS under probation supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

   This bill would change some of the existing eligibility requirements for early discharge from parole and PRCS. The reintegration credits portion of this bill would apply only to individuals released from prison and placed on parole, not on PRCS.

3) **Length of Parole Term**: The length of a person's parole term depends on the committing offense, the sentence imposed, and the date the offense is committed. Most inmates who received a determinate sentence will serve a three-year period of parole, with the possibility of a one-year extension. (Pen. Code § 3000, subd. (b).)

   The last data provided to this committee by CDCR (January 31, 2018) regarding the breakdown in the parole population by parole period is as follows:

Parole Population by Parole Period	
Parole Period (Years)	**Parole Population**
1	28
3	37,215
5	3,790
10	1,088
20	68
21	107
Life	2,169
Total	44,465

4) **Discharge from Parole**: Most parolees can be discharged from parole early by successfully completing a specified amount of parole time without obtaining any violations. Different time periods apply in determining the presumptive discharge date, depending on the length of parole. (See Pen. Code, § 3001.) For example, a person who was not imprisoned for a serious or violent felony, or for a registerable sex offense, and who is subject to a three-year parole period must be discharged from parole within 30 days after a consecutive six-month period of violation-free parole unless BPH decides to retain the person. (Pen. Code, § 3001, subd. (a).)

   When a parolee reaches the presumptive discharge date, CDCR will prepare a recommendation as to whether or not the person should remain on parole. Parole terminates automatically unless BPH decides to retain the parolee after the presumptive discharge date. If the parolee is retained on parole, the parolee's case will be reviewed annually until the maximum parole date is reached. (Pen. Code, § 3001, subd. (d).) If a parolee has not been discharged early, the parolee must discharge after serving the maximum period of parole specified.

   CDCR has informed this committee that there were a total of 23,464 discharges during the two year period from 2017 through 2018. For this same period, 8,513 parolees discharged early.

   This bill would lower some of the parole timelines for early release eligibility, in particular for some serious or violent felons who have been on parole continuously for 180 days and have not re-offended. The reduced timeline does not apply to a parolee required to register as a sex offender. Moreover, if the person poses an unacceptable risk for committing a serious or violent offense, BPH may retain the person on parole. The parolee must also consent to early discharge. If a person is retained on parole, CDCR must develop a written plan to provide the person with interventions including counseling and vocational training.

5) **CDCR Parole Generally**: Generally, BPH has jurisdiction over parolees who committed their commitment offense before July 1, 2013, and all Penal Code section 3000.1 cases (e.g., commitment crimes including first degree murder, second degree murder, life terms for kidnapping, and specified sexual offenses involving children under the age of 14 years old). CDCR's Division of Adult Parole Operations (DAPO) has jurisdiction over individuals who committed their offense on or after July 1, 2013, with the exception of those committed under Penal Code section 3000.1. (Pen. Code, § 3000, subd. (b)(5).)

   Both the early release eligibility provisions and the reintegration credits provisions appear to apply to both parole populations – BPH and DAPO.

6) **DAPO's Earned Discharge Policy**: According to information provided to this committee by CDCR, DAPO's Earned Discharge Policy, currently in effect, applies to parolees with commitment offenses that have occurred after July 1, 2013, with the exception of Penal Code section 3000.1 cases. Under the provisions of the Earned Discharge Policy, a parolee who accomplishes the goals listed within their case plan, successfully addresses their criminogenic needs, particularly in the areas of substance abuse, mental health, employment, and education, and completes any mandated programming (e.g., batterer's program, parenting classes, etc.) will discharge from parole within at least 15-18 months.

Under the early release provisions of this bill, a parolee could discharge after 180 days.

7) **Discharge from PRCS**: A person on PRCS must be discharged from supervision within 30 days if they have been on PRCS for a continuous year with no violations of their PRCS conditions that result in a custodial sanction. (Pen. Code, § 3456, subd. (a)(3).) A person on PRCS may be considered for immediate discharge if they have been on PRCS for 180 consecutive days with no violations of their PRCS conditions that result in a custodial sanction.

   This bill would lower some of the PRCS timelines for early release eligibility and eliminate the supervising county's ability to retain a person on PRCS in some instances. In particular, the bill would require the supervising county to discharge a person from PRCS if they had been on 180 continuous days of supervision with no new offenses or violations during the initial 180 days of release.

8) **Constitutional Authority to Award Credits Given to CDCR in Proposition 57**: Proposition 57, the "The Public Safety and Rehabilitation Act of 2016" of the November 2016 election changed the rules governing parole and the granting of custody credits to inmates in state prison. Prop. 57 authorized CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. Before Prop. 57, the matter of conduct credits earned in prison was governed by statute. (See e.g., Pen. Code, §§ 2933 and 2933.1.)

   Specifically, Prop. 57 added section 32 to article I of the California Constitution which states, in pertinent part:

   "32. (a) The following provisions are hereby added to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, *notwithstanding anything in this article or any other provision of law*....
   (2) Credit Earning: *The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements*.
   (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." (Cal. Const., art. I, § 32, emphasis added)

   As pertains to this bill, this language raises the question of whether the Legislature still has the authority to enact statutory credit schemes. "It is at least arguable that CDCR is given total control over credits because the Act specifies that CDCR 'shall have the authority to award credits' 'notwithstanding any other law.'" (See Proposition 57: The Public Safety and Rehabilitation Act of 2016, by Couzens & Bigelow, May 2017, p. 13. < http://www.courts.ca.gov/documents/prop57-Parole-and-Credits-Memo.pdf >.)

   In *People v. Brown* (2016) 63 Cal.4th 335, the Supreme Court considered the scope of Elections Code section 9002, which permits amendments to an initiative if they are "reasonably germane" to the measure's theme, purpose, or subject. In opining the proposed amendments to Prop. 57 which would grant CDCR the power to award credits violated this

section, Justice Chin's dissenting opinion discussed the implications:

> "The constitutional amendment would also give the Department of Corrections and Rehabilitation (department) constitutional authority to award behavior and other credits. The Legislature has already enacted detailed mandatory provisions for the department to award conduct and participation credits. (See Pen. Code, § 2931 et seq.) But the amended measure's proposed constitutional language is permissive. Presumably, authority to award credits includes authority not to award credits or to award lower credits than the statutes currently require. Because the Constitution prevails over mere statutes, it appears the proposed constitutional amendment would displace the current statutory provisions for credits and shift authority over such credits from the legislative to the executive branch of government."
>
> For the moment, I will assume that altering the balance of power between the two branches of government in this way would not be an impermissible constitutional *revision*. ... But shifting power from one branch of government to another is not reasonably germane to the original measure, which left the separation of powers between the branches of government untouched. (*Brown, supra*, 63 Cal.4th at p. 359.)

Justice Chin's dissent further stated:

> "The proposed constitutional amendment gives the department "authority to award credits earned for good behavior and approved rehabilitative or educational achievements." (Amended measure, § 3, adding art. I, proposed § 32, subd. (a)(2).) But it does not explain how this new, apparently permissive constitutional provision would interact with the detailed, mandatory provisions for credits the Legislature has enacted. As I have already discussed, the constitutional provision would seem to displace the statutory scheme. But I am not sure that is the intent. Displacing the statutory credit scheme might be one of the measure's "unintended consequences".... (*Brown, supra*, 63 Cal.4th at p. 361.)

It remains an open question whether the Legislature still has the authority to enact statutes pertaining to credits. However, as noted by Justice Chin, it is possible that one of the "unintended consequences" of Prop. 57 was to shift this authority exclusively to the executive branch.

The reintegration credits portion of this bill would apply to individuals released from prison and placed on parole, not on PRCS.

9) **Parole Caseload**: CDCR has informed this committee that the general population, which is most of their parole population, is supervised under their California Parole Supervision and Reintegration Model (CPSRM) at 53 parolees to one parole agent. Their sex offender population is supervised under their Sex Offender Management Program (SOMP) at 25 registered sex offenders to one parole agent with global positioning system (GPS) monitoring. Similarly, their GPS gang caseloads are supervised at a 25 to 1 ratio. Their GPS caseloads only make up approximately 6,500 of their 55,000 total population, so most supervision is at 53-1 ratio.

This bill would limit the number of persons on parole under the supervision of single parole agent to 40.

10) **Prohibition on Waiving Credits**: An incarcerated person may earn certain credits to be applied against their sentence. For example, in addition to actual time spent in presentence custody (Pen. Code, § 2900.5), a person may earn credits, with exceptions, for good conduct during their presentence custody (Pen. Code, § 4019). Additionally, a person may earn day-for-day credits, with exceptions, for good conduct during post-sentence incarceration. (Pen. Code, § 2933.)

For over 140 years California law has provided that "Any one may waive the advantage of a law intended solely for his benefit." (Civ. Code, § 3513.) This maxim of jurisprudence has been applied in a variety of criminal cases, upholding waivers of significant rights. (See, e.g., *People v. Johnson* (2002) 28 Cal.4th 1050, 1055 [waiver of credits for time in pre-sentence custody]; *People v. Lara* (2012) 54 Cal.4th 896, 903, fn. 3 ["prisoner may waive presentence credits, including conduct credits, as part of a negotiated disposition"].) The ability to waive presentence custody credits affords a court the flexibility to reinstate probation while having the defendant serve up to one year in the county jail. (Pen. Code, § 19.2 [one-year limit on jail time that can be served as a condition of probation].)

On the other hand, post-sentence conduct credit is determined by CDCR. (Pen. Code, §§ 2930–2935; *People v. Buckhalter* (2001) 26 Cal.4th 20, 31.) Because CDCR has the duty of determining prison behavior and worktime credits, it is an abuse of discretion for a sentencing court to determine prison credits before the administrative process is completed. (*People v. Chew* (1985) 172 Cal.App.3d 45, 50–51, disapproved on another point in *People v. Buckhalter, supra*, 26 Cal.4th at p. 40.)

This bill would clarify that the ability to earn post-sentence credits in prison for good conduct under Penal Code section 2933 cannot be waived by the sentencing court or by the defendant as part of a plea agreement. However, this bill would also prohibit a sentencing court or defendant as part of a plea agreement from waiving the ability to earn pre-sentence conduct credits (Pen. Code, § 4019). Should this flexibility currently afforded courts and criminal defendants in plea negotiations be taken away?

11) **Practical Considerations**: The Governor's May Revision of the 2020-2021 budget proposes to set a cap on parole terms and establish earned discharge:

> In an effort to align community supervision terms with evidence that most recidivism occurs earlier in the supervision period, create incentives for positive behavior change, and more effectively use limited state resources, the May Revision proposes to cap supervision for most parolees at 24 months, establish earned discharge for non-Penal Code section 290 registrants at 12 months, and establish earned discharge at 18 months for certain Penal Code section 290 registrants. This proposal is expected to result in estimated savings of $23.2 million General Fund in 2020-21, increasing to $76 million ongoing General Fund in 2023-24.

(< http://www.ebudget.ca.gov/ > [as of May 14, 2020].)

12) **Argument in Support**: According to *Californians for Safety and Justice*, a co-sponsor of this bill, "AB 2342 represents sensible parole reform grounded in science and drafted to enhance public safety. It draws upon and expands already successful parts of California law and is endorsed by a broad coalition of criminal justice actors and advocates. AB 2342 will reduce recidivism in California by incentivizing persons on parole to comply with the conditions of parole, pursue educational and vocational goals, and participate in rehabilitation programs for which they can earn reduced terms of supervision. AB 2342 embraces the science that establishes it is counterproductive to inflexibly tie the length of parole to the type of commitment offense and to supervise persons on parole longer than they need to reintegrate into society. AB 2342 allows the length of parole to be responsive to the circumstances of the person under parole supervision, including their conduct while on parole and their ability to acquire educational, occupational and therapeutic skills critical for successful community reentry.

"For decades, the parameters of parole supervision in California have been tethered to commitment offense, even though the crime for which a person is convicted often says extraordinarily little about that person's readiness to become a responsible and productive citizen. Additionally, the primary focus of parole agents and staff has been to spot missteps and punish persons for those missteps, rather than identify persons' needs, and promote their successes in attaining goals to meet those needs. While people on parole are encouraged to seek educational or job training opportunities, the parole system is not designed to provide them with the support and incentives to find and complete programs that greatly increase the likelihood of successful reentry.

"California has a 55 to 1 person on parole to Agent funding ratio for most of the parole population. Most parole agents are frequently responsible for supervising 60 or more persons on parole. These ratios are too large to allow agents to develop a nuanced understanding of the needs of the persons whom they supervise. Agents are forced to simply "manage" their caseloads via a predetermined list of "specifications" structured around a case "point" system rather than being positioned to meaningfully respond to the multifaceted, complex issues faced by the persons whom they supervise. These predicaments restrict the agent's ability to be flexible and responsive while concurrently requiring the frequent transfer of people on parole to a new supervising Agent. This reality short-changes persons on parole and more distressingly adversely impacts community safety.

"These facts expose the faults of our current scheme, which fails to tailor parole terms and resources to the needs and complex circumstances of the person on parole. California's system of parole supervision must adopt a new paradigm that focuses on the successful reintegration of persons on parole, and which gives parole agents the time and tools they need to identify those who should remain on parole, and help those persons obtain the programs and achieve measurable progress towards acquiring the skills necessary to become productive members in their communities.

"AB 2342 is rooted in the understanding that the principle objective of post-incarceration supervision is to coordinate, manage, encourage and facilitate the successful reintegration of persons on parole. Research shows that public safety is improved when determinations about the length and nature of community supervision reflect the person's unique circumstances and conduct, and when the parole system places greater emphasis on rewarding persons on parole for their acquisition of critical life skills rather than punishing them for their mistakes.

"AB 2342 adopts nationwide best practices to improve under what circumstances and how long persons are supervised within the state's parole system. Research demonstrates that persons who fail on parole tend to fail very quickly, usually during their first 90 days on parole, and almost always before their first six months. California law partially reflects this reality by allowing certain persons on parole to be eligible for discharge from parole after their first 180 days on parole if they perform well. AB 2342 expands this opportunity for early discharge to a broader population of persons on parole. AB 2342 incentivizes persons on parole to engage in crime-free behavior and gain greater aptitude in education, work readiness and physical and behavioral health, instead of simply "doing their time" (the current paradigm).

"AB 2342 also lowers the parole agent to person on parole ratio for non-specialized caseloads to 40-1. Reducing community supervision caseload ratios (while maintaining parole's current funding level) will improve public safety by better enabling agents to develop the critically important personal relationship with persons on parole, identify the needs of those persons, connect them to services and programs that address those needs, and monitor their progress towards acquiring competences to thrive when they are discharged from parole.

"In this way, AB 2342 is a sensible counterpart to the Governor's response to the COVID-19 pandemic. Because of COVID-19, over 6,000 people, some who represent a new and unique risk to the community and themselves have unexpectedly been released from prison and are now being supervised by parole. Now more than ever before, it is imperative that parole has the capability to quickly and accurately identify who in their population is most at risk to the often-deadly consequences and concurrent public safety implications of the COVID-19 virus. AB 2342 helps to ensure parole is effectively deployed and appropriately supported in the community as they respond to the unique public safety obligations the COVID-19 pandemic demands."

13) **Argument in Opposition**: According to the *Peace Officers Research Association of California*, "Current law requires specified persons who have been released on parole from state prison who were imprisoned for a serious felony or an offense requiring registration as a sex offender, and who have been on parole continuously for one year since release from confinement, to be discharged from parole. Current law also requires that specified persons who have been released on parole from state prison who were imprisoned for a violent felony, and who have been released on parole for a period not exceeding 3 years and have been on parole continuously for 2 years since release from confinement, or who have been released on parole for a period not exceeding 5 years and have been on parole continuously for 3 years since release from confinement, be similarly discharged from parole. This bill would instead require all of the persons described, except those imprisoned for an offense requiring registration as a sex offender, who have been on parole continuously for 180 days and during that time have not committed any new offenses or violated the terms or conditions of parole, to be discharged, unless there is good cause, as specified, for the person to be retained.

"PORAC understands that the author wants to work to reduce the recidivism numbers in California. However, shortening or eliminating parole is a dangerous way to address this. Oversight, education, and vocational assistance reduces recidivism, not simply letting a

parolee off supervision because they managed to not reoffend within 180 days."

14) **Prior Legislation**:

a) AB 1182 (Carrillo), of the 2019-2020 Legislative Session, would have required discharge from parole for specified parolees after six months unless the parolee had violated any of their parole conditions within that six month period. AB 1182 was held in the Assembly Appropriations Committee.

b) AB 277 (McCarty), of the 2019-2020 Legislative Session, would have created a program through which parolees, except those subject to sex offender registration requirements, are able to earn "reintegration credits" to reduce the term of parole. AB 277 was held in the Assembly Appropriations Committee.

c) AB 1940 (McCarty), of the 2017-2018 Legislative Session, would have created a program through which parolees, except those subject to sex offender registration requirements, are able to earn "reintegration credits" to reduce the term of parole. AB 1940 failed passage in the Assembly.

d) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment, which, among other things, shifted the supervision of some inmates released from prison from parole agents of CDCR to local supervision by probation departments.

REGISTERED SUPPORT / OPPOSITION:

Support

#cut50 (Co-Sponsor)
Anti Recidivism Coalition (Co-Sponsor)
Californians for Safety and Justice (Co-Sponsor)
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Re:store Justice
San Francisco Public Defender
Smart Justice California
Underground Scholars Initiative UC Berkeley

Oppose

Peace Officers Research Association of California (PORAC)
San Bernardino County Safety Employees' Benefit Association

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 2362 (Muratsuchi) – As Introduced February 18, 2020

SUMMARY: Authorizes, commencing July 1, 2021, the Department of Justice to impose civil fines on firearms dealers for breaches of regulations or prohibitions related to their firearms dealers license. Specifically, **this bill**:

1) Permits the Department of Justice (DOJ) to impose a civil fine of up to $1,000 against firearms dealers for a breach of specified prohibitions relating to firearms dealer licensing.

2) Provides for a civil fine of up to $3,000 for breaches that subject a licensee to forfeiture of their firearms dealer license for either of the following:

   a) The licensee previously received written notification from the DOJ regarding the breach and subsequently failed to take timely corrective action; or

   b) The licensee is otherwise determined by the DOJ to have knowingly or with gross negligence violated a regulation or prohibition related to licensing.

3) Allows DOJ to adopt regulations setting fine amounts and setting up an appeals process.

EXISTING LAW:

1) States that, in general and subject to exceptions, the business of a firearms licensee shall be conducted only in the buildings designated by the business license. (Pen. Code § 26805, subd. (a).)

2) Provides an exception that a person licensed, as specified, may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at any gun show or event if the gun show or event is not conducted from any motorized or towed vehicle. A person conducting business shall be entitled to conduct business as authorized at any gun show or event in the state, without regard to the jurisdiction within this state that issued the license provided the person complies with all applicable laws, including, but not limited to, the waiting period specified, and all applicable local laws, regulations, and fees, if any. (Pen. Code § 26805, subd. (b)(1).)

3) Provides an exception for a person licensed, as specified, who may engage in the sale and transfer of firearms other than handguns, at specified events, subject to the prohibitions and restrictions contained in those sections. (Pen. Code § 26805, subd. (c)(1).)

4) Provides an exception for a person licensed, as specified, who may also accept delivery of firearms other than handguns, outside the building designated in the license, provided the

firearm is being donated for the purpose of sale or transfer at an auction or similar event specified. (Pen. Code § 26805, subd. (c)(2).)

5) Provides that a firearm may be delivered to the purchaser, transferee, or person being loaned the firearm at one of the following places:

   a) The building designated in the license;

   b) The places specified as express exceptions; and,

   c) The place of residence of, the fixed place of business of, or on private property owned or lawfully possessed by, the purchaser, transferee, or person being loaned the firearm. (Pen. Code § 26805, subd. (d).)

6) Provides a person conducting specified firearms business shall publicly display the person's license issued, or a facsimile thereof, at any gun show or event, as specified in this subdivision. (Pen. Code § 26805, subd. (b)(2).)

7) Requires that firearms be secured at any time when the dealer is not open for business, as specified. (Pen. Code, § 26890.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2362 would improve public safety and bring increased accountability, transparency, and security to gun sales in California by authorizing DOJ to fine irresponsible dealers who break the law."

2) **Imposition of Civil Fines for Violations of Rules Related to Grounds for Forfeiture of a License to Sell Firearms:** This bill proposes new fines related to violations of rules imposed upon licensees. The fines suggested are up to a $1,000 civil fine for simple violations, and up to $3,000 fines for violations when the licensee previously received written notification from the DOJ regarding the breach and failed to take corrective action, or the DOJ determines that the licensee committed the breach knowingly or with gross negligence. The grounds for forfeiture include a wide range of conduct, including the following: properly displayed license, proper delivery of a firearm, properly displaying firearms, prompt processing of firearms transactions, posting of warning signs, safety certificate compliance, checking proof of California residence, safe handling demonstrations, offering a firearms pamphlet, and many more.

3) **Argument in Support**: According to the *California Department of Justice*, "In order to operate in California, firearms dealers and license holders must have (1) a Federal Firearms License, (2) a license issued by a county or other local agency, and (3) a Certificate of Eligibility issued by the DOJ. If they have all of these items, they are included on the DOJ-maintained centralized list that allows them to operate their business. The DOJ conducts spontaneous on-site inspections of dealers and license holders to ensure they are complying with transfer requirements, dealer record and record retention requirements, facility maintenance and security requirements, and waiting period requirements.

"If a dealer or license holder is out of compliance, the DOJ sends written notification requesting corrective action. Follow up inspections may be performed to ensure corrective action has been taken. Not every instance of non-compliance warrants revocation of a certificate or removal from the centralized list; however, DOJ lacks authority to impose progressive disciplinary actions. For example, dealers and license holders are required to update the safety signage on their business premises with the correct font and text size as specified by statute. Repeated violation for incorrect font size would warrant some level of penalty that is short of removal from the centralized list.

"Revocation and removal from the centralized list ultimately results in a person's ability to operate and is a heavy-handed consequence when an infraction is minor. AB 2362 grants DOJ the ability to impose aggressive discipline policies that will hold dealers and license holders accountable without irreparably penalizing them for minor mistakes or oversight. For example, a monetary fine could be imposed against a dealer or license holder that fails to take corrective action after receiving a warning for a minor offense."

4) **Argument in Opposition**: According to the *California Rifle and Pistol Association*, "Commencing July1. 2022, AB 2362 would authorize DOJ to impose a civil fine on licensed firearms dealers not exceeding $1,000 for paper work violations, and a civil fine not exceeding $3,000 for a violation when the licensee had received written notification from the DOJ regarding the violation and fails to take corrective action and fails to take corrective action, as specified, or the DOJ determines the licensee committed the violation knowingly or with gross negligence.

   The decision to bestow additional authority to the Department could lead to needless, punitive measures against firearms dealers who may have made an insignificant mistake stemming from lack of responsiveness from the DOJ. Existing law already regulates licensed firearms dealers and provides that a license is subject to forfeiture for breach of specified prohibitions of law. In other words the DOJ already has the authority to terminate noncompliant firearms dealers!"

5) **Prior Legislation**: AB 1064 (Muratsuchi), of the 2019-2020 Legislative Session, was similar to this bill in that it proposed graduated fines to be imposed by the DOJ for breaches of regulations and requirements related to firearms dealers. AB 1064 had a number of other provisions related firearms dealers and their business premises. AB 1064 was held on the Senate Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Brady California United Against Gun Violence
Brady United Against Gun Violence
California Department of Justice
Neveragainca

Oppose

California Rifle and Pistol Association, INC.
Gun Owners of California, INC.

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 3035 (Patterson) – As Amended May 4, 2020

SUMMARY: Allows a law enforcement agency to publish a petition to humanely euthanize or otherwise dispose of animals or birds who were seized in connection with an arrest for an offense pertaining to illegal animal fighting, in an online or print newspaper, on a social media outlet account belonging to a law enforcement agency or appropriate governmental agency, or on a law enforcement internet website.

EXISTING LAW:

1) Allows an officer making an arrest for offenses related to animal fighting to lawfully take possession of the animals. (Pen. Code § 599aa, subd. (a).)

2) Requires that upon taking possession of the animals, the officer shall inventory the animals seized and question the persons present as to the identity of the owner or owners and requires that the inventory list identify the location where the animals were seized, the names of the persons from whom the animals were seized, and the names of any known owners of the animals. (Pen. Code § 599aa, subd. (b)(1).)

3) Requires the officer to file the inventory list with the magistrate presiding over the criminal case and requires the magistrate to order the seized animals to be held until the final disposition of any charges. (Pen. Code § 599aa, subd. (c).)

4) States that if ownership of the seized animals cannot be determined after reasonable efforts, the officer or other person named and designated in the order as custodian of the animals may, after holding the animals and birds for a period of not less than 10 days, petition the magistrate for permission to humanely euthanize or otherwise dispose of the animals or birds. (Pen. Code § 599aa, subd. (e)(1).)

5) Requires the petition to humanely euthanize or otherwise dispose of the animals to be published for three successive days in a newspaper of general circulation. (*Ibid.*)

6) Requires the magistrate to hold a hearing on the petition not less than 10 days after seizure of the animals, after which the magistrate may order the animals to be humanely euthanized or otherwise disposed of, or to be retained by the officer or person with custody until the conviction or final discharge of the arrested person. (*Ibid.*)

7) Makes it a felony to do any of the following:

a) Own, possess, keep, or train any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

b) For amusement or gain, cause any dog to fight with another dog, or cause any dogs to injure each other; or,

c) Permit any act in violation of dog fighting, training or injuring to be done on any premises under his or her charge or control, or aids or abet that act. (Pen. Code § 597.5, subd. (a).)

8) Makes it a misdemeanor to knowingly be present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or knowingly be present at that exhibition or at any other fighting or injuring of dogs. (Pen. Code § 597.5, subd. (b).)

9) Makes it a misdemeanor for any person who, for amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any animal, including any dog, to fight with a different kind of animal or creature, or with any human being, or who, for amusement or gain, worries or injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal, not including any dog, to worry or injure each other, or any person who permits the same to be done on any premises under his or her charge or control, or any person who aids or abets the fighting or worrying of an animal or creature. (Pen. Code § 597b, subd. (a).)

10) Makes it a misdemeanor for any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and for any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock. ((Pen. Code § 597b, subd. (b).)

11) Makes a second or subsequent conviction of bull, bear, other animal, or cock fighting a misdemeanor or felony (wobbler). ((Pen. Code § 597b, subd. (c).)

12) Makes it a misdemeanor for any person to be knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or to be knowingly present at that exhibition or knowingly present where preparations are being made for animal fighting. (Pen. Code § 597c).

13) Makes it a misdemeanor for any person to own, possess, keep, or train any bird or other animal with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting. (Pen. Code § 597j.)

14) Authorizes search and arrest warrants for animal fighting offenses. (Pen. Code § 599a.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's law enforcement officers are responsible for handling the animals illegally used in cockfighting and other animal fights, a process that involves numerous steps and attention to detail. With the advancement of technology and media, continuing to require law enforcement to place these ads in a newspaper of general circulation is a less efficient method in meeting the requirements laid out in the law. AB 3035 attempts to modernize the code surrounding cockfighting and other illegal animal fights to more efficiently advertise the publication notice requirements within this area of the law."

2) **Background**: The following information was also submitted by the author: "Illegal rooster fighting, also known as 'cock fighting,' is a highly aggressive gambling sport where two roosters bred for aggression are placed in a small ring and forced to fight to death. This illegal sport takes place all over the state. California's law enforcement officers are responsible for breaking up cockfights and confiscating all property left, which includes the roosters.

"Once law enforcement personnel break up the cockfight, current law requires them to inventory all confiscated items left, including the birds, and attempt to question those (if any) still present for ownership. If no one comes forward, law enforcement must then do the following:

(1) Relocate the birds to an appropriate storage facility.

(2) If no owner is suspected, law enforcement must file a petition with the courts to, after a period no less than 10 days, humanely euthanize the birds or otherwise dispose of them (e.g. an animal preservation group takes possession of them).

(3) Before disposing of the birds, law enforcement must first advertise, in a newspaper of general circulation (hard copy), the birds and the warning to euthanize unless the owners come forward. If no owner comes forward, law enforcement will euthanize the birds or dispose of them otherwise.

"Current law on the issue is decades old and explicitly states that the petition to destroy animals or birds used in combat must be published for three consecutive days in only a newspaper of general circulation (hard copy). This statute was implemented long before the advent of online publications and social media, a simpler and more efficient process for law enforcement to advertise these types of petitions. Additionally, newspapers can charge high prices for these type of advertisements (see attached an invoice stating the Fresno Bee charged Fresno County Sheriffs $8,005.86 for one ad).

"AB 3035 would make a technical and minor adjustment to modernize Penal Code Section 599aa dealing with the publication notice requirements of the seizure and destruction of roosters used for cockfighting. Instead of only requiring publication in a "newspaper of general circulation" (in physical print), this bill will allow the following publishing mediums to be considered for the purposes of satisfying this code requirement: social media outlets, websites belonging to a law enforcement agency or local government entity, and newspaper websites. This bill not only modernize the process for attempting to return the birds back to their owners through advertisements but it will also save law enforcement and ultimately the

state money spent on physical ads."

3) **Seizing Animals Involved in Fighting Offenses**: The act of fighting animals for amusement or economic gain is illegal in California. The animals that are most often used in fighting events are dogs and roosters. Under Penal Code Section 597.5, it is a felony to own, keep, or train a dog with the intent that the dog engage in an exhibition of fighting. Penal Code Section 597b criminalizes the fighting of other animals, including roosters (commonly known as cock-fighting).

When an officer makes an arrest for one of these animal fighting offenses, the problem arises of what to do with the animals. The owners having been arrested and taken to jail, there is no longer anyone present to take care of them. Therefore, under California law, if the animals are dogs, the officer must take possession of the animals. In the case of other animals the officer may, and likely will, take possession. The officer is then required to file a complaint in court. Pursuant to court order, the animals are placed in the custody of a proper person or place, such as an animal shelter. If the person charged with the offense is convicted, the animals are to be forfeited and then euthanized or otherwise disposed. (*See Jett v. Mun. Court* (1986) 177 Cal. App. 3d 664, 669.). Prior to any euthanization of the animals, existing law requires that the intent to do so be published for three days in a newspaper of general circulation.

The Need for This Bill: The policy rationale behind requiring law enforcement to publish its intent to humanely euthanize animals that have been involved in illegal fighting is to attempt to reach the owner of an animal, thereby giving an opportunity for the animal to be claimed prior to being euthanized. Since owning or possessing animal for the purpose of fighting, and even being present at an animal fight, is illegal in the state of California, the notion that someone will voluntarily expose him or herself to law enforcement in order claim ownership of a fighting animal seems unlikely. The proponents of this bill were unaware of any situation in which the public notice had reunited an animal with its owner, and the opponents were also unable to provide any such examples. The example given in support of this bill pertains to cock-fighting. In the case of cock-fighting, it may be particularly unlikely that a person will see a notice and then come forward to claim ownership of the animal.

Nonetheless, there may be a rare case in which a person has had a bird or dog stolen and somehow that animal winds up being involved in an animal fighting offense. In that situation, the more people who see a published petition to dispose of the animals, the more likely it is that an owner who lost their pet to the underground world of dog or cock fighting may be able to recover the animal. The ideal policy for publishing such information should therefore be designed to reach as many people as possible. Current law requires that the petition to euthanize animals who were seized from fighting offenses be published in a (print) newspaper of general circulation. This bill proposes to allow law enforcement to publish its intent to euthanize seized animals in one of several different places, including on law enforcement social media accounts or on the law enforcement agency's website.

Over the years, people have begun to consume their news digitally as opposed to getting it from print newspapers. According to the Pew Research Center, the circulation of daily newspapers has been on the decline since the early 1990's. (*Newspapers Fact Sheet*, Pew Research Center, July 9, 2019, available at: https://www.journalism.org/fact-sheet/newspapers/, [as of May 12, 2020].) Based on that decline, it is reasonable to assume

that print newspapers may no longer reach as many people as an online publication. In addition, the pandemic of COVID-19 appears to have exacerbated the decline of print newspaper subscriptions. (James, *Coronavirus Crisis Hastens the Collapse of Local Newspapers. Here's Why it Matters*, Los Angeles Times, April 17, 2020, available at: https://www.latimes.com/entertainment-arts/business/story/2020-04-17/coronavirus-local-newspapers-struggle, [as of May 11, 2020].) In this sense, transitioning the petition to destroy animals from print newspaper to digital formats may result in more people taking notice of the petition, increasing the likelihood that a person may recover an animal that somehow wound up being involved in an animal fighting exhibition.

Regardless of where the publication is placed, the consistency provided by requiring a public notice of euthanization in exactly one location may be more effective than allowing the notice to be placed in a variety of locations. Under current law, pet owners who have lost an animal and fear that it may have been swept up in an animal fighting ring will know that they must look in the local newspaper for potential information about their pet. The clarity of one place of publication saves a person from having to look at both print and online newspaper publications as well as a multitude of social media accounts (twitter, Instagram, etc.) as well as the individual law enforcement websites for both the local police and the local county sheriff. This bill would require a person who is attempting to discover a lost pet that somehow made its way into the world of underground animal fighting to search numerous locations in order to locate news of the animal's whereabouts.

It appears that the impetus for this bill is mostly economic. It is expensive for law enforcement agencies to run print newspaper advertisements for three days prior to disposing of an animal. The costs incurred by law enforcement agencies to run these advertisements are in addition to any costs related to storing the animal in an appropriate location. In support of this bill, the sponsor submitted an invoice from the Fresno Bee for more than $8,000 for running a petition to euthanize roosters that were involved in a cock-fighting offense. That cost seems high, and it is reportedly consistent with other charges that the Fresno Bee has required in the past. According to the proponents of this bill, the Fresno Sheriff's office is required to run these notices at least once a year. It is unclear whether the $8,000 cost is consistent with the rate that other newspapers in the state are charging. It is also difficult to judge how burdensome the existing law is on law enforcement agencies statewide because numbers on how many animal seizures are taking place in counties other than Fresno were not available.

4) **Argument in Support**: According to the bill's sponsor, the *California State Sheriffs' Association,* "The statute that dictates the practice of publicizing the seizure and proposed destruction of roosters used in illegal activities has not been updated for decades. Current law explicitly states that the petition to destroy animals or birds used in combat must be published for three consecutive days in only a newspaper of general circulation. This statute was contemplated long before the advent of online publications and social media.

"This requirement should conform to allow for a news publication other than a "newspaper of general circulation" (in physical print). Publications that should be considered include but are not limited to social media outlets and/or internet publication through newspaper companies that are of general circulation.

"For these reasons, CSSA is pleased to sponsor AB 3035, which would update and simplify

the notice requirements for roosters used in illegal activities."

5) **Arguments in Opposition:**

a) According to the *California Newspapers Publishers Association,* "AB 3035 would allow the petition to be posted on a website or social media operated by a law enforcement agency which will become the preference for these agencies. However, a person who visits law enforcement sites or uses social media will not have any idea what to look for other than that information they are seeking. Presuming the intent of the bill is to make it more convenient and less expensive for these agencies to provide the information to the public, the problem is that change in the law will make it less likely that the animals will be reunited with their owners.

"Under the current requirements, the notice has a better chance of being seen in a newspaper because people in a community already know when they pick up a paper they will find information about local news and events – including public notices. As people turn the pages of a newspaper there is a serendipitous experience where the reader stumbles upon information he or she does not seek, but it is nevertheless available for them to learn about, and understand. It is this experience that makes the local newspaper the logical place to publish a notice like the petition seeking authority to euthanize a seized animal.

"On a law enforcement website or social media the serendipitous experience does not take place. Users of these platforms go directly to these locations to obtain the information they seek and rarely stumble upon information for which they are not specifically searching. These notices will hardly ever be seen by the public and that is precisely why the proposed change in the law will not be as effective in reuniting seized animals with their owners – the sole purpose of the notice.

"There are many good reasons that important public notices should not be posted exclusively on a government web site or on its social media. Public notices published in newspapers of general circulation ensure notification to the general populace because they have these elements:

- Publication is in a forum independent of the government.
- The published notice is archivable and secure.
- The notice is accessible by all segments of society.
- Publication is verifiable (by way of an affidavit of publication).

...

"Finally, this bill fails to take into consideration that many bird or animal owners, especially in rural areas of California may not have access or reliable access to the Internet, which would prevent the reunification of pets and owners based on economic circumstance or location."

b) According to the *American Civil Liberties Union of California*, "Numerous California statutes require notice of various government actions to be provided by publication in a

newspaper of general circulation. There are many reasons why newspapers are identified as the means for these official notices – they provide a means of notice that is in an independent forum, not published directly by a government agency; the published notice is secure and can be archived to ensure that there is a record of notice; the notice is accessible to everyone; and publication can be verified, again, by a body independent of the government agency. Any change to notice requirements must be undertaken with the utmost care to ensure that notice continues to be provided in a way that fills the need for an independent, accessible, secure, archivable and verifiable means of publication, and that maximizes the likelihood that interested parties will actually see the notice. AB 3035 would depart from this consistent practice and instead allow notices potentially to be buried by being posted on an obscure social media account or website where few might think to look, and where those without internet access or without access to a specific social media forum might not be able to look."

6) **Prior Legislation**:

a) AB 1553 (Fong) Chapter 7, Statutes of 2019 replaced terms such as the "pound" and "destroy animals" with references to "animal shelter" and "humanely euthanize animals."

b) SB 196 (Knight) Chapter 422, Statutes of 1997 established the requirement that a petition to euthanize animals seized by law enforcement be published in a newspaper of general circulation.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Oppose

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
California News Publishers Association

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

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

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

AB 3099 (Ramos) – As Amended May 6, 2020

SUMMARY: States that, to improve reporting, training, and outreach to tribes and tribal police, the Department of Justice shall, subject to an appropriation by the Legislature, provide assistance to law enforcement agencies that have Indian lands within or abutting their jurisdictions, including tribal police. **Specifically**, this bill:

1) Provides that assistance shall include assistance with reporting, statistics, training materials, outreach materials, and procedures, as needed, relating to crime issues on tribal lands and Native American communities including, but not limited to, homicides and missing persons cases involving Native American women and girls.

2) Provides that assistances shall include coordinating education and outreach between tribal police and state and local law enforcement agencies.

EXISTING STATE LAW:

1) Defines "hate crime" as any criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

   e) Religion;

   f) Sexual orientation; or,

   g) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

2) Requires the Attorney General to direct local law enforcement agencies to report specified information relative to hate crimes to DOJ. (Pen. Code, § 13023, subd. (a).)

3) Requires every state and local law enforcement agency to make available a brochure on hate crimes to victims of these crimes and the public. (Pen. Code, §422.92, subd. (a).)

4) Requires the Department of Fair Employment and Housing to provide existing brochures to local law enforcement agencies upon request for reproduction and distribution to victims of hate crimes and other interested parties. In carrying out these responsibilities, the department shall consult the Fair Employment and Housing Council, the DOJ, and the California Victim Compensation Board. (Pen. Code, §422.92, subd. (b).)

5) Requires the department to annually submit a report to the Legislature that analyzes the results of information obtained from local law enforcement pursuant to these provisions, and update the OpenJustice Web portal with the information obtained from local law enforcement agencies. (Pen. Code, § 13023, subds. (a) and (b).)

6) Establishes in the Office of Emergency Services a program of financial and technical assistance for local law enforcement, called the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, et seq.)

EXISTING FEDERAL LAW:

1) Defines "Indian Country" as:

   a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

   b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and,

   c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. § 1151)

2) Provides concurrent California and Tribal jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country (18 U.S.C. § 1162.):

   a) If the offender is non-Indian, and the victim is non-Indian, the state has exclusive jurisdiction; (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)

   b) If the offender is non-Indian, and the victim is Indian, the state has exclusive jurisdiction; (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)

   c) If the offender is Indian, and the victim is non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government; (Indian Civil Rights Act, 25 U.S.C. § 1301.)

   d) If the offender is Indian, and the victim is Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government; (Indian Civil Rights Act, 25 U.S.C. § 1301.)

e) If the offender is non-Indian, and there is a victimless crime, the state has exclusive jurisdiction; or, (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)

f) If the offender is Indian, and there is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.)

3) Provides California limited jurisdiction over civil offenses that occur within Indian country (25 U.S.C. § 1322, subds. (a) & (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Jurisdictional uncertainty caused by Public Law 280 is a knotted tangle of conflicting priorities. It causes lack of clarity in the law. There is a failure to discuss these gaps, and our failure has only resulted in confusion and a hesitancy in pursuing justice. These dilemmas have also contributed to the disgraceful and tragic number of Missing and Murdered Indigenous Women and Girls and has contributed to ineffective justice on tribal lands. To many, the term Missing and Murdered Indigenous Women and Girls is a disturbing classification of crimes. For those of us who were brought up in Indian Country and still live there, it refers to beloved sisters, cousins, and other family members and friends we know, or are known to others who care about and mourn them. By creating specific tribal positions within the Department of Justice to collect data—and by engaging with local law enforcement agencies adjacent to tribes—we can help inform and support solutions that will reduce the numbers of Missing and Murdered Indigenous Women and Girls across California."

2) **Public Law 280**: Public Law 280 is a federal law enacted in 1953, which controls relationships between Indian Lands and six states, including California. The law shifted to these states, from federal jurisdiction, the right to prosecute most crimes occurring on Indian land. The propriety of Public Law 280 was questioned at the time of the law's passage and continues to raise questions as to its appropriateness and efficacy.[1]

3) **Tribal Law and Order Act (TOLA) of 2010**: The Tribal Law and Order Act of 2010 (TOLA) was signed by President Obama in an effort to address rising crime on Indian lands, and decrease violence against indigenous people. TOLA authorizes tribal governments to request that the U.S. Department of Justice resume federal criminal jurisdiction over that tribe's land. This created concurrent jurisdiction between the states and federal government to prosecute crimes. In 2018, 999 crimes on Indian territory were referred to the U.S. DOJ for prosecution; 64.3% of these cases were not prosecuted due to insufficient evidence.[2]

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[1]Carole Goldberg-Ambrose, *Public Law 280 and the Problem of Lawlessness in California Indian Country*, 44 UCLA L. Rev. 1405 (1997).
[2] *Indian Country Investigations and Prosecutions*, U.S, D.O.J., available at https://www.justice.gov/otj/page/file/1231431/download, last accessed May 11, 2020.

4) **Hate Crimes Against Native Americans**: Several news outlets have reported that hate crimes against Native Americans have been on the rise,[3] but due to improperly categorized incidents and lack of data reporting by law enforcement there is not strong data that shows this trend. According to the National Congress of American Indians, Native Americans make up about 0.9% of the US population.[4] In 2017, the FBI reported that there were 5,060 victims of race/ethnicity/ancestry motivated hate crime, and of those 6.3% were victims of anti-American Indian or Alaska Native bias.[5]

5) **Underreporting of Hate Crimes**: Currently hate crime data is voluntarily submitted to the FBI's Uniform Crime Reporting (UCR) Program by local law enforcement agencies. In 2017, 1,094 hate crimes were reported in California.[6] One study found that only about 10% of victims report hate crimes to tribal or local police due to secondary victimization or retaliation by the perpetrator.[7] A 2014 study found that police may also be confused about what constitutes a hate crime.[8] Further, hate crimes are classified as federal crimes, so they fall under FBI jurisdiction, not local, which could contribute to why crimes are rarely classified as such. One study found that "between 2004 and 2012, an average of 269,000 victimizations were reported by the NCVS."[9] During this same time period, the FBI UCR hate crime statistics reported an average of 8,770 incidents. This discrepancy implies there may be a underreporting of hate crimes.[10]

   This bill seeks to provide additional resources to law enforcement agencies with Indian lands in their territory to collect data and statistics in an effort to better understand and respond to crimes involving Native American communities and tribal land.

6) **Anti-Reservation Groups:** The Southern Poverty Law Center defines a "hate group" as any group with beliefs or practices that attack or malign an entire class of people—particularly when the characteristics being maligned are immutable.

   There is public debate as to whether groups such as Citizens Equal Rights Alliance (CERA) should qualify as a hate group since they advocate that Indigenous Americans should not have their own land and legal system. CERA proclaims its mission is "to change federal Indian policies that threaten or restrict the individual rights of all citizens living on or near Indian reservations. We do not tolerate racial prejudice of any kind. We do not knowingly

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[3]Bleir, Zoledziowski, *Murdered and Missing Native American Women Challenge Police and Courts,* Aug. 27, 2018 The Center for Public Integrity, available at: https://publicintegrity.org/politics/murdered-and-missing-native-american-women-challenge-police-and-courts/, last accessed May 11, 2020.

[4]*Demographics*, Nat'l Conf. of American Indians, available at: http://www.ncai.org/about-tribes/demographics, last accessed May 11, 2020.

[5]2017 Hate Crime Statistics, FBI, available at https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims, last accessed May 11, 2020.

[6] 2017 Hate Crime Statistics, FBI, available at https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims, last accessed May 10, 2020.

[7] Barbara Perry, *Silent Victims: Hate Crimes Against Native Americans*, 2008, University of Arizona Press, available at https://www.h-net.org/reviews/showpdf.php?id=29737

[8] Hillary D. McNeel, *Hate Crimes Against American Indians and Alaskan Natives*, available at http://www.ncjrs.gov/App/publications/abstract.aspx?ID=270163

[9] Frank Pezzella, et al. *The Dark Figure of Hate Crime Underreporting*, January 2019, American Behavioral Scientist, available at https://www.researchgate.net/publication/330708636_The_Dark_Figure_of_Hate_Crime_Underreporting

[10] 2004-2012, FBI UCR Hate Crime Statistics, available at https://ucr.fbi.gov/hate-crime

associate with anyone who discriminates based on race. Federal Indian Policy is unaccountable, destructive, racist, and unconstitutional. It is, therefore CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States."[11]

7) **Argument in Support**: According to the *Riverside Sheriffs' Association,* "Riverside County is home to nine Indian gaming casinos. AB 3099 will help to improve the coordination and delivery of public safety services on and around tribal lands.

'Specifically, AB 3099 would create two new positions within the California Department of Justice (DOJ) to provide assistance to tribal police, including reporting statistics, training materials, outreach materials, and procedures relating to crime issues on tribal lands and Native American communities, including, but not limited to, missing persons cases involving Native American women and girls. AB 3099 would also require the DOJ to coordinate education and outreach between tribal police and state and local law enforcement agencies.

"The additional positions created by this bill will help close the gap among state and local law enforcement and tribal law enforcement, create trust and foster relationships in an effort improve data reporting practices and coordination between the varying levels of law enforcement."

8) **Related Legislation**: AB 1854 (Frazier), of the 2019-2020 Legislative Session, would create the Missing or Murdered Native American Women Task Force in the Department of Justice, and would provide for the membership of that task force. AB 1854 is pending before this committee.

9) **Prior Legislation**:

   a) AB 1653 (Frazier), of the 2019-2020 Legislative Session, would have created the Missing and Murdered Indigenous Women Task Force to consult with California's Indian tribes to ensure resources are used effectively to investigate cases of missing and murdered indigenous persons in the state. AB 1653 was held in the Assembly Appropriations Committee.

   b) AB 301 (Chu), of the 2019-2020 Legislative Session, would have required the DOJ to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported, hate crimes policies. AB 301 was held in the Assembly Appropriations Committee.

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[11] *About CERA*, available at https://citizensalliance.org/, last accessed May 11, 2020.

REGISTERED SUPPORT / OPPOSITION:

Support

Nextgen California
Peace Officers Research Association of California (PORAC)
Riverside Sheriffs' Association

Opposition

None

Analysis Prepared by: Nikki Moore

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

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

AB 2147 (Reyes) – As Introduced February 10, 2020

SUMMARY: Allows a defendant who successfully participated in the California Conservation Camp Program (Fire Camp) or a county inmate hand crew to petition for a dismissal of their conviction. Requires the court, if the defendant is eligible for relief, to dismiss the conviction against the defendant and would release the defendant from all penalties and disabilities resulting from the offense, except as provided. Specifically, **this bill**:

1) Specifies that if a defendant successfully participated in the California Conservation Camp program as an inmate hand crew member, as specified, or successfully participated as a member of a county inmate hand crew, as specified, and has been released from custody, the defendant is eligible for dismissal of charges, as described in this bill.

2) States that the defendant may file a petition for relief with the court in the county where the defendant was sentenced.

3) Requires a court to provide a copy of the petition to the Secretary of CDCR, or, in the case of a county inmate hand crew member, the appropriate county authority.

4) Specifies that if the Secretary of CDCR or county authority certifies to the court that the defendant successfully completed the inmate conservation camp program, the court shall issue an order to dismiss the conviction.

5) States that to be eligible for relief pursuant to this bill, the defendant is not required to complete the term of their probation, parole, or supervised release.

6) Specifies that the court, in providing relief pursuant to this bill, shall order early termination of probation, parole, or supervised release if the court determines that the defendant has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief pursuant to this section.

7) Provides that a defendant who is granted a dismissal pursuant to the provisions of this bill shall not be required to disclose the conviction on an application for licensure by any state or local agency.

8) States that the defendant would still be required to disclose the conviction on an application for a position as a peace officer, public office, or for contracting with the California State Lottery Commission.

9) States that if the defendant meets the specified requirements, the court shall permit the defendant to withdraw the plea of guilty or plea of nolo contendere, or, if the defendant has

been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and, in either case, the court shall thereupon dismiss charges against the defendant and the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which the defendant has been convicted, except for revocations or suspensions of the defendant's driving privilege.

10) Specifies that the relief available pursuant to this bill shall not be granted if the defendant is serving a sentence for, is on probation, parole, or supervised release for, or charged with the commission of, any other offense.

11) Allows the defendant to make the application and change of plea in person or by attorney.

12) States that the relief granted pursuant to the provisions of this bill is subject to the following conditions:

   a) In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the accusation or information had not been dismissed;

   b) The order shall state, and the defendant shall be informed, that the order does not relieve the defendant of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for a peace officer, public office, or for contracting with the California State Lottery Commission;

   c) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in the person's custody or control any firearm; and

   d) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

13) Provides that relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief.

14) States that it shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

15) States that if, after receiving notice of the petition for relief, the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

16) Make findings and declarations.

EXISTING LAW:

1) Defines "California Conservation Camps" as "any camps now or hereafter established, as provided by law, for the purpose of receiving prisoners committed to the custody of the Director of Corrections and wards committed to the Director of the Youth Authority, and in which the work projects performed by the inmates or wards are supervised by employees of

the department." (Public Resources Code, § 4952.)

2) States that the California Department of Corrections and Rehabilitations (CDCR) shall utilize inmates and wards assigned to conservation camps in performing fire prevention, fire control, and other work of the department. (Public Resources Code, § 4953, subd. (a).)

3) States that upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred and the court may issue an order to seal the records pertaining to the arrest, as specified. (Pen. Code, § 1000.4, subd. (a).)

4) States that in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted relief, the defendant shall be able to withdraw his or her guilty plea and have the charges dismissed. In cases in which the defendant was convicted after a plea of not guilty, the court shall set aside the verdict of guilty and dismiss the charges. In either case, the defendant shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except the suspension or revocation of the person's driving privilege, as specified. (Pen. Code, § 1203.4, subd. (a)(1).)

5) Specifies that a person is not eligible to withdraw their plea or have their plea set aside and have the charges dismissed if the defendant is serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. (Pen. Code, § 1203.4, subd. (a)(1).)

6) Specifies circumstances in which a defendant who was convicted of a misdemeanor and not granted probation, or a defendant who was convicted of an infraction, is entitled to withdraw his or her guilty plea and have the charges dismissed or the court shall set aside the verdict of guilty and dismiss the charges. (Pen. Code, § 1203.4a, subd. (a).)

7) States that a defendant convicted of a misdemeanor and not granted probation, and every defendant convicted of an infraction who does not meet the requirements to have his or her guilty plea withdrawn or verdict set aside and the charges dismissed may still be granted such relief in the interests of justice. (Pen. Code, § 1203.4a, subd. (b).)

8) Specifies circumstances in which a court, in its discretion, may allow a defendant to withdraw his or her plea of guilty or set a guilty verdict and dismiss the charges when that defendant was convicted of a felony offense, as specified. (Pen. Code, § 1203.41.)

9) Specifies circumstances in which a court may, in its discretion, allow a defendant to withdraw his or her guilty plea and have the charges dismissed or set aside the verdict of guilty and dismiss the charges for a person who was convicted of an offense prior to the 2011 Realignment Legislation for a crime for which he or she would otherwise have been eligible for sentencing, as specified. (Pen. Code, § 1203.42.)

10) Specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for being a prohibited person in

possession of a firearm, as specified. (Pen. Code, § 1203.4, subd. (a)(2).)

11) Specifies that relief in the form of a withdrawal of plea or setting aside a plea and having the charges dismissed does not permit a person prohibited from holding public office as a result of that conviction to hold public office. (Pen. Code, § 1203.4, subd. (a)(3).)

12) Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf. (Pen. Code, § 1203.425.)

13) Provides that a defendant who has been convicted of solicitation or prostitution, as specified, may petition the court for, and the court may set aside the conviction if the defendant can show that the conviction was the result of his or her status as a victim of human trafficking. (Pen. Code, § 1203.49.)

14) Notwithstanding any other law, any inmate sentenced to county jail assigned to a conservation camp by a sheriff and who is eligible to earn one day of credit for every one day of incarceration shall instead earn two days of credit for every one day of service. (Pen. Code 4019.2, subd. (a).)

15) Requires DOJ to maintain state summary criminal history information and specifies procedures and prohibitions on the disclosure and use of that information. (Pen. Code, § 11105.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2147 ensures that formerly incarcerated people who have successfully participated as incarcerated firefighters have a pathway to meaningful employment. For those who have successfully completed the California conservation Camp Program, as incarcerated firefighters, and have demonstrated rehabilitation and a desire to work they will be eligible for an expedited expungement process. These individuals have received valuable training and placed themselves in danger to defend the life and property of Californians. However, upon release formerly incarcerated firefighters face difficulty and obstacles in achieving employment due to their past criminal record. Due to the their service to the state of California in protecting lives and property those individuals that successfully complete their service in the fire camps should be granted special consideration relating to their underlying criminal conviction."

2) **Conservation (Fire) Camps**: The primary mission of the Conservation Camp Program is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters. CDCR, in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operates 43 conservation camps, commonly known as fire camps, located in 27 counties. All camps are minimum-security facilities and all are staffed with correctional staff. https://www.cdcr.ca.gov/facility-locator/conservation-

camps/

Overall, there are approximately 3,100 inmates working at fire camps currently. Approximately 2,200 of those are fire line-qualified inmates. In addition to inmate firefighters, camp inmates can work as support staff for the camps. All inmates receive the same entry-level training that CAL FIRE's seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program. An inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have "minimum custody" status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison and participation in rehabilitative programming.

Adult male inmates receive fire-fighting training at the California Correctional Center, Susanville; Sierra Conservation Center, Jamestown; the California Men's Colony, San Luis Obispo; and the California Rehabilitation Center, Norco. Female inmates are trained at the California Institution for Women, Corona. Juvenile offenders are trained at the Pine Grove Conservation Camp in Amador County.

Some convictions automatically make an inmate ineligible for conservation camp assignment, even if they have minimum custody status. Those convictions include: sexual offenses, arson and any history of escape with force or violence. Inmates considered potential fire crew members are evaluated for their physical fitness by CDCR and are trained in fire-fighting techniques by CalFire, which includes a week of classroom instruction and a second week of field exercises. https://www.cdcr.ca.gov/facility-locator/conservation-camps/

3) **Expungement Relief in General**: Originally, expungement relief was available to defendants placed on probation. 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.) Then, 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. Under existing law expungements are not available to individuals sentenced to state prison and a few specified offenses.

Expungement relieves a person "shall be released from all penalties and disabilities resulting from the offense." However, in California, expungement does not completely wipe away a person's record of conviction. When expungement relief is granted, the conviction is set aside and the charging document is dismissed. This neither erases nor seals the record of conviction. Despite the dismissal order, the conviction record remains a public document. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) In fact, a person who is eligible to have their record expunged still faces many of the consequences of a criminal conviction, such as the inability to have a firearm or hold public office, if the conviction is one that prevents a person from holding such a position. An expunged conviction has the same effects in subsequent criminal cases as convictions that are not expunged. Applicants applying for employment do not have to disclose the conviction on an application for employment, but must disclose the conviction on an application for licensure by any state or local agency.

This bill would establish a conviction relief process for fire camp participants that provides additional benefits beyond what is available under the existing expungement process. This bill would relieve a person from the requirement to disclose the conviction when applying for a license. This bill would immediately terminate a period of probation, parole, or supervised release. This bill would also include individuals that had been sentenced on felonies to state prison that cannot currently obtain expungements.

4) **Employment Barriers for People with Criminal History Records**: Getting a job with a criminal record can be very difficult. According to the U.S. Equal Employment Opportunity Commission (EEOC), as many as 92 percent of employers subject their applicants to criminal background checks. Some employers ask applicants whether they have been convicted of any crimes up front on the application and turn away anyone who checks the box. Others run background checks and reject anyone who turns up with a criminal history without further review.

   The criminal justice system is known to disproportionately affect people of color, therefore the barriers to employment caused by criminal history also impact people of color disproportionately. The EEOC reports that one in every 17 white men will be incarcerated at some point in their lifetimes. That figure for Latino men is one in six; for African-American men it is one in three.

   Existing law provides procedures in which a person who has been arrested for, or convicted of, a criminal offense, can petition a court to have his or her conviction dismissed or "expunged." When these procedures are successful, they generally treat the conviction as if it had never occurred. This allows persons formally arrested or convicted, to lawfully withhold information about their arrest or conviction when applying for jobs. Under existing law, an expungement does not relieve a person of the duty to disclose such a conviction when seeking licensing by the state. California has a large number of professions which require an individual to be licensed in order to engage in those activities.

   Inmate firefighters can have difficulty getting an EMT license because of their prior convictions. Without an EMT license, these same individuals can be excluded from jobs with firefighting organizations. This bill would allow an inmate firefighter to expunge the conviction that led to their most recent incarceration for licensing purposes, but will not clear other convictions that might be on their record. If the goal is specifically help inmates that have been trained as fire fighters on the path to become fire fighters once they leave state prison custody, is there more direct and effective way to do that?

   This bill seeks to relieve individuals that have had their conviction expunged under provisions of this bill from the duty to disclose the conviction for license purposes of any kind. California requires licensing for a wide variety of employments. Even if inmate fire firefighters should have a path for EMT licensing, are there other licenses for which it would be appropriate that individuals covered by this bill disclose a conviction that was otherwise expunged?

5) **Equal Protection:** The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. Accordingly, the first prerequisite to a claim under the equal protection clause is a showing

that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes, but whether they are similarly situated for purposes of the law challenged. (*People v. Brown* (2012) 54 Cal.4th 314.)

The test the Supreme Court has used in a majority of cases is known as the rational basis test. It is basically a test of reasonableness. Courts ask two questions: (1) Did the state have a reasonable purpose (or "rational basis") for passing the law? (2) Is there some difference between the two classes or groups of people that makes it reasonable to treat them differently?

This bill would create a unique expungement process for a class of inmates that successfully participated in a fire camp. The ability to take advantage of the expungement process would not be available to other state prison inmates with similar or potentially less serious charges. The expedited and enhanced expungement process in this bill would not be generally available to individuals convicted of felonies, but not sentenced state prison because they were placed on probation or sentenced to county jail on a realigned felony.

The findings and declarations in this bill state ". . . , inmate hand crew members face difficulty and obstacles in achieving employment due to their past criminal record." Those obstacles are faced by similarly situated felons that did not participate in a fire camp, but participated in rehabilitative programing, pursued educational opportunities, and worked during their time in custody. There is a possibility that an equal protection challenge would be raised based on the provisions of this bill. However, if a court was called to evaluate such a challenge, a court might find that the fire camp participants were *not* similarly situated to other state prison inmates because of the bodily danger they face as firefighters. Even if a court found the fire camp participants to be similarly situated, a court could find that there was a rational basis to treat them differently.

The Legislature has created a post conviction expungement process for a narrow category of people in the past. AB 1585 (Alejo), Chapter 708, Statutes of 2014, specified that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Although the bill applied to a narrow category of people, the relief provided was not dramatically different than what was generally available to other individuals under the broader expungement law.

6) **Time Frame for Supervision Under Parole/Post Release Community Supervision(PRCS)/Probation:** The forms of supervision that exist under current law are parole (release from prison), post release community supervision (PRCS) (release from prison), mandatory supervision (release from county jail on a realigned felony), and probation (release from county jail).

Individuals released from state prison are placed on supervision in the form of parole or PRCS. Individuals released from prison that are in prison for a conviction of a strike offense (serious or violent), are serving a sentence as a 3-striker, are a high risk sex offender, or are found to be a mentally disordered offender are supervised on parole. The maximum period an individual can be maintained on parole depends of the nature of the offense(s) for which the person is being paroled. The Board of Parole Hearings can release an individual from

parole before their maximum time period based on a review of the individual's performance. Every other individual released from prison and not supervised on parole is placed on post release community supervision for up to three years. Post release community supervision (PRCS) is handled by the county probation departments. A person who has been on PRCS continuously for one year with no violations of their conditions of PRCS that result in a return to custody must be discharged. A person on post release community supervision for 6 consecutive months with no violations of their conditions that resulted in a return to custody may be considered for immediate discharge.

Individuals sentenced to county jail on misdemeanors or felonies can also be subject to supervision after release from custody. Individuals sentenced to county jail on realigned felonies are placed on mandatory supervision. Mandatory supervision is handled by the probation department in the county where the conviction occurred. Mandatory supervision can be for a period equal to the defendant's maximum period of confinement in county jail. Defendants convicted on misdemeanors and felonies can also be supervised on probation after their release from county jail. Generally speaking, the maximum time for probation supervision on a misdemeanor case is three years, and five years on a felony. Current law allows individuals on probation to petition the court for an early termination of probation.

This bill would require immediate termination of parole, probation, or "supervised release" if a person files a petition and it is verified that the person "successfully participated" in a conservation camp. Presumably, a person could file their petition immediately upon release from custody and avoid post release supervision altogether. Perhaps the fact that a person has participated in a fire camp indicates that they do not need the supervision that California has deemed appropriate for other inmates that are being released from state prison, but it does raise the question as to whether supervision serves an important purpose.

Under the provisions of this bill, if the court grants the petition for relief, the court shall order early termination of probation, parole, or "supervised release" if the court determines that the defendant has not violated any terms or conditions of probation, parole, or supervised release prior to, and during the pendency of, the petition for relief pursuant to this section. This bill refers to parole and "supervised release," but does not mention mandatory supervision or post release community supervision. It is not clear what is meant by "supervised release."

7) **Not Clear What it Means to "Successfully Participate" in a Conservation Camp:** This bill states that person will be granted relief on the conviction that formed the basis for their incarceration if the person "successfully participated" in the Conservation Camp Program. For a state prison inmate that "successful participation" would be determined by CDCR. It is not clear what criteria CDCR would use to determine "successful participation."

8) **Definition of Inmate Hand Crew:** The relief this bill provides is limited to inmates that successfully participated in the California Conservation Camp program as an *inmate hand crew member* or a member of a *county inmate hand crew.* "Inmate hand crew" is not currently defined in code. It is not clear if this bill is only intended to cover individuals participating in the California Conservation Camp that are specifically fighting fires, or if "inmate hand crew" might cover other actions/individuals in the California Conservation Camp. This bill also would extend relief to in custody inmates that were part of a "county inmate hand crew." The same problem of vagueness applies to "county inmate hand crew."

9) **Argument in Support**: According to *Initiate Justice*, "The California Conservation Camp Program was initiated by the California Department of Corrections and Rehabilitation (CDCR) to provide able-bodied individuals the opportunity to work on meaningful projects throughout the state. Those projects can include clearing firebreaks, restoring historical structures, maintaining parks, sand bagging and flood protection, reforestation and clearing fallen trees and debris. CDCR, in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LAC FIRE), jointly operates 43 conservation camps, commonly known as fire camps, located in 27 counties.

"The conservation camps makeup approximately 219 fire-fighting crews. In an average year, the Conservation Camp Program provides approximately three million person-hours responding to fires and other community service projects, saving California taxpayers an estimated $100 million.

"Despite their dedication, many who participate in these programs struggle to find permanent and stable employment once released. This is in part due to significant barriers in place for individuals with a prior conviction to seek employment or even the education necessary to start a career. Under AB 2147, a person that served as an incarcerated fire-fighting crew member would be eligible to apply for an expungement upon release from custody, and if the expungement is approved, they then would be able to seek various career pathways including those that require a state license."

10) **Argument in Opposition:** According to the *California District Attorneys Association*, "This bill would apply to defendants who are sentenced to state prison, a population of inmates that, since the enactment of recent criminal justice reform legislation (i.e., AB 109, Prop 47), generally excludes low level, low risk offenders. While we understand the risks posed by wildfires and the need to use available resources to mitigate wildfire danger, relief such as expungement/dismissal of criminal cases should be limited to lower level offenders, specifically those who receive "local" sentences (probation or 1170(h)), not prison sentences. In addition, prison inmates participating in conservation camp or fire camp already receive incentives and benefits such as increased conduct credits.

11) **Related Legislation**: AB 1950 (Kamlager), specifies that a court may not impose a term of probation longer than two years for a misdemeanor or felony conviction. Increases the length of time that jail can be imposed as a condition of probation from one year to two years. AB 1950 is awaiting hearing in the Assembly Public Safety Committee.

12) **Prior Legislation**:

a) AB 972 (Bonta), of the 2019-2020 Legislative Session, would establish a process for courts to automatically redesignate as misdemeanors, felony convictions which are eligible to be reduced to misdemeanors because of the passage of Proposition 47 (2014). AB 972 was held on the Assembly Appropriation's Suspense File.

b) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the

DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

c) AB 2293 (Reyes), Chapter 342, Statutes of 2018, would have limited the criteria related to conduct that an employer, local emergency medical services agency (LEMSA), or Emergency Medical Services Authority (EMSA) can consider when denying an EMT-I or EMT-II license to conduct that directly relates to the course of employment, and authorizes an applicant to file a notice of defense within 30 days after service of an accusation. AB 2293 was gut and amended in the Senate to address a different policy concern.

d) AB 1793 (Bonta), Chapter 993, Statutes of 2018, requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions.

e) AB 2438 (Ting), of 2017-2018 Legislative Session, would have required the court to automatically expunge a conviction after a defendant has completed probation and fully complied with the sentence of the court. AB 2438 was held on the Assembly Appropriation's Suspense File.

f) AB 1585 (Alejo), Chapter 708, Statutes of 2014, specified that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti Recidivism Coalition
California Attorneys for Criminal Justice
California for Safety and Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
National Association of Social Workers, California Chapter
San Francisco Public Defender
Smart Justice California

Oppose

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

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 2426 (Reyes) – As Amended May 4, 2020

SUMMARY: Clarifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. Specifically, **this bill**:

1) Defines a state or local law enforcement agency to include the police department of the University of California, a California State University campus or a California Community College, or the police department of a school district.

2) Provides that a certifying official shall not refuse to complete the Form I-918 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

3) Provides that a certifying official shall not refuse to complete the Form I-914 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

EXISTING LAW:

1) Defines "certifying entity" to mean any of the following:

   a) A state or local law enforcement agency;

   b) A prosecutor;

   c) A judge;

   d) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity; or,

   e) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations. (Pen. Code, § 679.10, subd. (a).)

2) Defines a "certifying official" to mean any of the following:

   a) The head of the certifying entity;

b) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency;

c) A judge; or,

d) Any other certifying official as defined under the Code of Federal Regulations. (Pen. Code, § 679.10, subd. (b).)

3) States that for purposes of determining helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, 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) States that the certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity. (Pen. Code, § 679.10, subd. (i).)

5) States that a certifying entity shall process a Form I-918 Supplement B certification within 30 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within seven days of the first business day following the day the request was received. (Pen. Code, § 679.10, subd. (j).)

6) States that a current investigation, the filing of charges, closing of a case, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official. (Pen. Code, § 679.10, subd. (k).)

7) Defines "certifying entity" to mean any of the following:

a) A state or local law enforcement agency;

b) A prosecutor;

c) A judge;

d) The Department of Industrial Relations; or,

e) Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking. (Pen. Code, § 679.11, subd. (a).)

8) States that for purposes of determining cooperation, there is a rebuttable presumption that a victim is cooperative, has been cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Pen. Code, § 679.11, subd. (g).)

9) States that the certifying official shall fully complete and sign the Form I-914 Supplement B declaration and, regarding victim cooperation, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's cooperation or likely cooperation to the detection, investigation, or prosecution of the criminal activity. (Pen. Code, § 679.11, subd. (h).)

10) States that a certifying entity shall process a Form I-914 Supplement B declaration within 30 days of request, unless the noncitizen is in removal proceedings, in which case the declaration shall be processed within seven days of the first business day following the day the request was received. (Pen. Code, § 679.11, subd. (i).)

11) States that a current investigation, the filing of charges, closing of a case, or a prosecution or conviction is not required for the victim to request and obtain the Form I-914 Supplement B declaration from a certifying official. (Pen. Code, § 679.11, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Congress created the U and T Visa to build stronger relationships between immigrant communities and law enforcement while providing protection to crime victims who are undocumented immigrants from deportation and removal proceedings. The federal statute is clear that the role of law enforcement is to validate when victims of qualifying crimes have been helpful and corporative with investigative authorities.

"In 2015 California provided law enforcement with a framework that further clarified their role in the U Visa process and at which times they shall validate that an eligible victim has been helpful and corporative. It is no longer acceptable for law enforcement agencies to take it upon themselves to act as adjudicators within our legal immigration system, especially in times when relationships between law enforcement and immigrant communities have furthered due to rhetoric and the political theater that we have witnessed during the Trump Administration.

"Last year, Governor Newsom enacted AB 917 (Reyes), which ensures U-Visa applicants receive certification from local law enforcement in a timely manner, as well as when they have been helpful and cooperative with an investigation. However, immigration practitioners and their clients continue to face barriers in obtaining U-Visa certification. Many certifying agencies lack clear guidance to fully implement the federal U-Visa statute which has often times resulted in denial of certification or turning away the applicant due to the certifying agency's interpretation of the U-Visa federal statute. This has caused tremendous delays for immigrant victims who are seeking to protect themselves from deportation. The inconsistency of certifications from law enforcement across the state has contributed to the distrust between the immigrant community and law enforcement, misreporting of crimes, and confusion across California. The state has a responsibility to fully implement the Victims of Trafficking and Violence Prevention Act of 2000 and create a uniformed state statute to ensure certifying agencies complete their responsibilities

"This year, I have introduced AB 2426 to enhance the overall public safety of Californians to ensure that immigrants who are victims of crimes and cooperate with local law enforcement

in good faith, local agencies will provide the needed documentation that protects them from deportation. It is crucial that the government keeps the promises for immigrant victims. Furthermore, as a state we must do everything within our means to assist in those efforts and mitigate federal policies that seek to hinder that promise. Due to current tactics used by federal law enforcement, many immigrants are unwilling to come forward, but will be given greater assurance in working with law enforcement. This keeps not only our immigrant communities safe, but makes all communities safer.

"Specifically, AB 2426 clarifies that police departments governed by local school boards are certifying agencies. In addition, certifying agencies must certify a form if the victim meets all the requirements regardless of when the prosecution may have been. This bill also states that certifying agencies shall certify a form submitted by a victim of immigration fraud and that the form shall indicate 'extortion' as the crime committed."

2) **Argument in Support**: According to *California Immigrant Policy Center*, "AB 2426 would ensure that immigrants who are eligible for a U-Visa or T-Visa are guaranteed a timely certification. Additionally, this bill would ensure entities cannot refuse to certify an individual on the basis of involvement in a criminal case, if said case has been resolved. Congress created the U and T-Visa classifications with its passage of the Victims of Trafficking and Violence Protection Act (VTVPA) in 2000, affording immigrants who are victims of a common or human trafficking crime with the opportunity to obtain an immigrant visa upon cooperation with law enforcement in an investigation of the underlying crime. The creation of the U and T-Visas encourage immigrants to report crimes and receive protection from existing criminal laws, thereby improving public safety outcomes for everyone. However, in many jurisdictions, immigrants experience difficulty and or delays in obtaining the proper documentation from law enforcement to certify their participation in the investigation. These delays can result directly in the denial of a U-Visa or T-Visa application, leaving an eligible immigrant unable to adjust his or her status and vulnerable to deportation.

"AB 2426 remedies this problem by ensuring the certification is provided in a timely fashion and the process for obtaining these special visas is nondiscriminatory. This bill would ensure those who have cooperated with officials in an investigation are not left in harm's way and without protection."

3) **Argument in Opposition:** According to the *California State Sheriffs' Association*, "Victim cooperation can be extremely valuable when investigating criminal offenses. That said, existing law on this matter requires specified officials to sign these requests and contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement discretion. If the case is closed or the statute of limitations has run, the need for an official to make a certification about victim cooperation seems moot."

4) **Related Legislation**:

   a) 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.

b) AB 2321 (Jones-Sawyer), Permits an agency to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. AB 2321 is pending before this committee.

5) **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 2027 (Quirk), Chapter 749, Statutes of 2016, requires, upon the request of an immigrant victim of human trafficking, a certifying agency to certify victim cooperation on the applicable form so that the victim may apply for a T-Visa to temporarily live and work in the United States.

c) SB 674 (De Leon), Chapter 721, Statutes of 2015, provides that, upon request of a victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the applicable U-Visa certification form when the victim was a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that criminal activity.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Immigrant Policy Center
California Public Defenders Association
Coalition for Humane Immigrant Rights
Los Angeles County District Attorney's Office
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 2741 (Blanca Rubio) – As Introduced February 20, 2020

SUMMARY: Authorizes counties to create Child Advocacy Centers (CAC) in order to implement coordinated multidisciplinary responses to child abuse. Specifically, **this bill**:

1) Authorizes counties to utilize a CAC in order to implement coordinated multidisciplinary responses to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment.

2) Requires any county that utilizes a CAC to coordinate its multidisciplinary response to meet the following standards:

   a) The multidisciplinary team associated with the CAC shall consist of a representative of the CAC and at least one representative from each of the following disciplines: law enforcement, child protective services, district attorney's office, medical providers, mental health providers, victim advocate, or a representative of the CAC. Members of the multidisciplinary team may fill more than one role as needed;

   b) The multidisciplinary team, as utilized through the CAC, shall have cultural competency and diversity training to meet the needs of the community it serves;

   c) The CAC shall have a designated legal entity responsible for the governance of its operations. This entity shall oversee ongoing business practices of the CAC, including setting and implementing administrative policies, hiring and managing personnel, obtaining funding, supervising program and fiscal operations, and long-term planning;

   d) The CAC shall provide a dedicated child-focused setting designed to provide a safe, comfortable and neutral place where forensic interviews and other CAC services can be appropriately provided for children and families;

   e) The CAC shall produce written protocols for case review and case review procedures. Additionally, the CAC shall use a case tracking system to provide information on essential demographics and case information;

   f) The CAC shall verify that members of the multidisciplinary team responsible for medical evaluations have specific training in child abuse or child sexual abuse examinations;

   g) The CAC shall verify that members of the multidisciplinary team responsible for mental health services are trained in, and deliver, trauma-focused, evidence supported, mental health treatments; and,

h) The CAC shall verify that interviews conducted in the course of investigations are conducted in a forensically sound manner and occur in a child-focused setting designed to provide a safe, comfortable and dedicated for children and families.

3) Provides that counties are not limited to utilizing only one CAC.

4) States that the files, reports, records, communications, and working papers used or developed in providing services through a CAC are confidential and not public records.

5) Authorizes a multidisciplinary team at a CAC to share with other multidisciplinary team members any information or records concerning the child and family and the person who is the subject of the investigation of suspected child abuse or neglect for the sole purpose of facilitating a forensic interview or case discussion or providing services to the child or family; provided, however, that the shared information or records shall be treated as privileged and confidential to the extent required by law by the receiving multidisciplinary team members.

6) States the following legislative findings and declarations:

a) Perpetration of child abuse and neglect is detrimental to children;

b) All victims of child abuse or neglect deserve to be treated with dignity, respect, courtesy, and sensitivity as a matter of high public importance;

c) In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case should consider the needs of the child victim and do whatever is necessary to prevent psychological harm to the child and ensure that children disclosing abuse are not further victimized by the intervention systems designed to protect them;

d) A multidisciplinary approach to investigating child abuse and neglect is associated with less anxiety, fewer interviews, and increased support for the child, as well as interagency collaboration, coordination, intervention, and sharing of information;

e) A multidisciplinary response to allegations of child abuse and neglect has been found most effective and least traumatic when coordinated through a children's advocacy center; and,

f) The use of multidisciplinary teams and the establishment of children's advocacy centers throughout the State of California is necessary to coordinate investigation and prosecution of child abuse and neglect and to facilitate treatment referrals.

EXISTING LAW:

1) States the legislative intent that law enforcement agencies and the county welfare or probation department in each county shall develop and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases. (Pen. Code, § 11166.3, subd. (a).)

2) Requires the local law enforcement agency having jurisdiction over a mandated child abuse or neglect case, as specified, shall report to the county welfare or probation department that it is investigating the case within 36 hours after starting its investigation. (Pen. Code § 11166.3, subd. (a).)

3) Requires the county welfare department or probation department, in cases where a minor is a victim of child molestation, as specified, and a dependency petition has been filed with regard to the minor, to evaluate what action or actions would be in the best interest of the child victim. (Pen. Code § 11166.3, subd. (a).)

4) Provides notwithstanding any other provision of law, the county welfare department or probation department shall submit in writing its findings and the reasons therefor to the district attorney on or before the completion of the investigation. The written findings and the reasons therefor shall be delivered or made accessible to the defendant or his or her counsel. (Pen. Code § 11166.3, subd. (a).)

5) Mandates a local law enforcement agency having jurisdiction over a reported child abuse or neglect case to report to the district office of the State Department of Social Services any case reported under this section if the case involves a specified facility and the licensing of the facility has not been delegated to a county agency. The law enforcement agency shall send a copy of its investigation report and any other pertinent materials to the licensing agency upon the request of the licensing agency. (Pen. Code § 11166.3, subd. (b).)

6) Mandates the Department of Justice, in cooperation with the State Department of Social Services, to prescribe by regulation guidelines for the investigation of child abuse or neglect, as defined, in facilities licensed to care for children. (Pen. Code § 11174.1, subd. (a).)

7) Authorizes members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information reasonably believes it is generally relevant to the prevention, identification or treatment of child abuse. (Welf. and Inst. Code, § 830.)

8) Provides that counties may establish child abuse multidisciplinary personnel teams within that county to allow provider agencies to share confidential information in order for provider agencies to investigate reports of suspected child abuse and neglect, as specified, or for the purpose of child welfare agencies making a detention determination. (Welf. & Inst. Code, § 18961.7, subd. (a).)

9) Defines "multidisciplinary personnel" as any team of two or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. The team may include but not be limited to:

   a) Psychiatrists, psychologists or other trained counseling personnel;

   b) Police officers or other law enforcement agents;

c) Medical personnel with sufficient training to provide health services;

d) Social workers with training or experience in child abuse prevention; and,

e) Any public or private school teacher, administrative officer, supervisor of child welfare and attendance, or certificated pupil personnel employee. (Welf. & Inst. Code, § 18961.7, subd. (b)(1).)

10) Defines "provider agency" as any governmental or other agency that has as one of its purposes the prevention, identification, management, or treatment of child abuse or neglect. The provider agencies serving children and their families that may share information shall include, but not be limited to the following entities or agencies:

a) Social services;

b) Children's services;

c) Health services;

d) Mental health services;

e) Probation;

f) Law enforcement; and,

g) Schools. (Welf. & Inst. Code, § 18961.7, subd. (b)(2).)

11) Provides that notwithstanding any other provision of law, during a 30-day period, or longer if good cause exists following a report of suspected child abuse or neglect, members of a child abuse multidisciplinary team engaged in the prevention, identification, and treatment of child abuse may disclose to, and exchange with one another information and writing that relate to any incident of child abuse that may also be designated as confidential if the member of that team having that information or writing reasonably believes it is generally relevant to the prevention, identification, and treatment of child abuse. Any discussion relative to the disclosure or exchange of the information or writings during a team meeting is confidential, and notwithstanding any other provision of law, testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding. (Welf. & Inst. Code, § 18961.7, subd. (c)(1).)

12) States that all information and records communicated or provided to the team members by all provider agencies, as well as information and records created in the course of a child abuse or neglect investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. Existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by team members. (Welf. & Inst. Code, § 18961.7, subd. (h).)

13) Provides that any county may establish a computerized data base system within that county to allow provider agencies, as defined, to share specified identifying information regarding

families at risk for child abuse and neglect, for the purposes of forming multidisciplinary personnel teams. (Welf. & Inst. Code, § 18961.5, subd. (a).)

14) Provides that no employee of a provider agency which serves children and their families shall be civilly or criminally liable for furnishing or sharing information, as specified. (Welf. & Inst. Code, § 18961.5, subd. (g).)

15) Authorizes each county to establish an interagency child death review team to assist local agencies in identifying and reviewing a suspicious child death and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. (Pen. Code § 11174.32, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Childrens Advocacy Centers (CAC's) are at the forefront of the fight against the abuse and exploitation of vulnerable individuals. CAC's are able to address a continuum of care for abused children with a wide breadth of personnel including law enforcement, child protection entities, and medical professionals. These services are a critical foundation to ensuring abused children receive the resources and protections they require. However, without a statutory definition of the services that must be provided at these centers, there can be confusion as to what services are available to the children and the families served by them. AB 2741 is not requiring counties establish, procure or model other centers after CAC's. This bill simply ensures that individuals have consistent information as to what services are provided by participating CAC's. Codifying the standards of Children's Advocacy Centers is an essential step to providing clarity and comfort for individuals most impacted by abuse, trafficking, and exploitation."

2) **Governor's Veto**: AB 1221 Cooley, of the 2019-2020 Legislative Session, was identical to this bill, and was vetoed by the Governor. Governor Newsom in his veto message stated, "This bill would specify requirements for what constitutes a child advocacy center established in counties to coordinate the investigation and prosecution of child abuse cases. While this bill is well-intentioned, it provides overly broad immunity from civil and criminal liability for persons providing services to children and non-offending family members. For example, the measure makes no exceptions when a service provider acted with malice, gross negligence or in bad faith, or has been criminally charged with, or is suspected of, abusing or neglecting the child who is the subject of the investigation or services provided. For these reasons, I am unable to sign this bill."

3) **Prior Legislation**:

   a) AB 1221 (Cooley) of the 2019-2020 Legislative Session was identical to this bill. AB 1221 was vetoed by the Governor.

   b) AB 320 (Cooley), of the 2017-18 Legislative Session, was identical to this bill. AB 320 was held without a hearing in the Assembly Human Services Committee at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office
Peace Officers Research Association of California (PORAC)
The Children's Advocacy Center for Child Abuse Assessment and Treatment
The University Corporation Dba Strength United
Tuolumne County District Attorney's Office

Opposition

None

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 2699 (Santiago) – As Amended May 4, 2020

SUMMARY: Exempts the following entities from the prohibition against the sale or purchase of an "unsafe" handgun, if the handgun is purchased or sold for use by the sworn officers of that entity that have satisfactorily completed the firearms portion of the basic training course prescribed by the Commission on Peace Officer Standards and Training (POST):

1) The California Horse Racing Board;

2) The State Department of Health Care services;

3) The State Department of Public Health;

4) The State Department of Social Services;

5) The Department of Toxic Substances Control;

6) The Office of Statewide Health Planning and Development;

7) The Public Employees Retirement System;

8) The Department of Housing and Community Development;

9) Investigators of the Department of Business Oversight;

10) The Law Enforcement Branch of the Office of Emergency Services;

11) The California State Lottery; and,

12) The Franchise Tax Board.

EXISTING LAW:

1) 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 Department of Justice (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 state;

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).)

2) 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).)

3) 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.)

4) 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.)

5) 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).)

6) 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).)

7) 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).)

8) States that a handgun removed from the roster for failing the above re-testing 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).)

9) 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).)

10) 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;

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

   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, "Peace officers across the state are actively responding to the increased demand for their services and protection amidst COVID-19. During a pandemic, resources and time are of the essence and that is why AB 2699 is important. This bill allows law enforcement and state agencies to use safety-tested firearms and avoid costly re-purchases because a gun manufacturer did not pay a listing fee to the Department of Justice. Bringing peace officers to parity with those already authorized to purchase such firearms not only saves the state and counties resources, but it also helps ensure that we keep our public safe."

2) **"Unsafe" Handgun Law**: SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.

   - *Required Safety Device*: The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.

   - *Firing Test*: In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.

- *Drop Test*: The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.

3) **Failure to Pay a Fee may Result in a Weapon Being Deemed "Unsafe"**: DOJ deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, and perfectly capable of passing all three firing tests, but they are deemed "unsafe" for purposes of categorization. Many law enforcement agencies still use these weapons and there are numerous exemptions to the "unsafe" handgun law that allows those agencies to continue to use and possess them. This bill would add additional agencies to the exemptions list in order to avoid the cost of replacing firearms that are listed as "unsafe" despite being capable of complying with the firing tests.

4) **Argument in Support**: The *California Statewide Law Enforcement Association* states, "In 2001, Penal Code § 32000 created a list of non-exempt agencies who may purchase non-roster firearms for use in the discharge of their official duties. Questionably, certain trained peace officers and law enforcement personnel were left off the list. These peace officers are often required to participate in mutual aid situations, task forces, sting operations and arrests. These high risk situations require that these officers be properly armed.

   "In years past DOJ permitted these officers and departments to acquire these firearms for their public safety personnel. However, recent enforcement of the gun roster would require thousands of law enforcement to forfeit their guns. This legislation is necessary because it will allow officers, who have gone through the appropriate training to carry and keep their 'non-roster' handguns while on active duty. Thereby, also not creating a new expense for the state to repurchase new firearms and to retrain these personnel on these new firearms. In particular, this bill will expand the unsafe handgun to sworn officers within various state departments, including the California Horse Racing Board, the State Department of Public Health, the Department of Toxic Substance Control, Investigators at the at the Department of Business Oversight, and others who have the necessary training to carry these particular handguns."

5) **Prior Legislation**: AB 1794 (Jones-Sawyer) of the 2019 Legislative Session was almost identical to this bill. AB 1794 was held on the Senate Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Statewide Law Enforcement Association
Mountains Recreation and Conservation Authority

Opposition

None

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 2425 (Mark Stone) – As Amended May 4, 2020

SUMMARY: Prohibits the release of information by a law enforcement or probation agency when a juvenile has participated in or completed a diversion program. Specifically, **this bill**:

1) Imposes a duty on a probation department to notify an arresting law enforcement agency, and public or private agency operating a diversion program, to seal the arrest records of a minor referred to the agency by a probation officer or a prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court. Requires the arresting law enforcement agency to seal the records in its custody relating to the arrest no later than 60 days from the date of notification by the probation department and notify the probation department that the records have been sealed.

2) States that a law enforcement agency shall not release a copy of a juvenile police record in the following cases:

   a) A minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program;

   b) A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and for whom no referral to probation has been made within 60 days of the release; and,

   c) A minor who no longer falls within the jurisdiction of the juvenile delinquency court under current state law.

3) States that a law enforcement agency shall release, upon request, a copy of a juvenile police record to the minor who is the subject of the juvenile police record and their parent or guardian only if identifying information pertaining to any other juvenile has been removed from the record.

4) A law enforcement agency shall notify a minor in writing that their police record has been sealed under the provisions of this bill, and if the law enforcement agency determines that a minor's juvenile police record is not eligible for sealing, the agency shall notify the minor in writing of that determination. Provides a juvenile the right to appeal a finding of ineligibility for sealing.

5) Defines "diversion" to mean "an intervention that redirects youth away from formal processing in the juvenile justice system, including a referral to a diversion program, as defined, or an intervention that redirects youth who can no longer be prosecuted under

current state law."

6) Defines "diversion service provider" to mean "an agency or organization providing diversion services to a minor."

7) Defines "satisfactory completion" to mean "to substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform, as determined by the service provider."

8) Repeals the provision which states that an evaluation of the efficacy of the procedures for the release of police records containing information about minors as described in this section shall be conducted by the juvenile court and law enforcement in Los Angeles County and the results of that evaluation shall be reported to the Legislature on or before December 31, 2006.

9) Provides that the Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS), shall develop forms for distribution by law enforcement agencies to the public to implement this section. States that the forms shall include, but are not limited to, the Petition to Seal Report of Law Enforcement Agency. The material for the public shall include information about the persons who are entitled to a copy of the juvenile police record and the specific procedures for requesting a copy of the record if a petition is necessary.

10) Makes legislative findings to justify the limitation on access to public records, stating that there is a need to keep these records from being disclosed to the public in order to preserve the confidential information of a minor who is currently participating in a diversion program or who has satisfactorily completed a diversion program, a minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and a minor who no longer falls within the jurisdiction of the juvenile delinquency court under current state law.

EXISTING LAW:

1) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified serious, sexual, or violent offense, then the court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court. (Welf. & Inst. Code, § 786, subd. (a).)

2) Requires the court to send a copy of the order of dismissal and sealing to the agencies named in the order and directing the agencies to destroy the sealed records. (Welf. & Inst. Code, § 786, subd. (a).)

3) Allows the court access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its dependency or delinquency jurisdiction. (Welf. & Inst. Code, § 786, subd. (f)(1).)

4) Gives the prosecuting attorney and the probation department of any county access to those records after they are sealed for the limited purposes. (Welf. & Inst. Code, § 786, subd.

(f)(1).)

5) States that access for these limited purposes shall not be considered an unsealing of the records. (Welf. & Inst. Code, § 786, subd. (f).)

6) 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).)

7) States that 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 reply accordingly to any inquiry about the events. (Welf. & Inst. Code, § 781, subd. (a).)

8) Permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)

9) Allows a judge of the juvenile court in which a petition was filed to dismiss the petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. (Welf. & Inst. Code, § 782.)

10) Allows the probation officer to destroy all records and papers in the proceedings concerning a minor after five years from the date on which the jurisdiction of the juvenile court over the minor is terminated. (Welf. & Inst. Code, § 826.)

11) Authorizes a county child welfare agency responsible for the supervision and placement of a minor or non-minor dependent of the court to access sealed juvenile records for the limited purpose of determining an appropriate placement or service that has been ordered by the court for that dependent. (Welf. & Inst. Code, § 827.9.)

12) States that, except as limited by sealing laws, there is an ability to access any information gathered by a law enforcement agency, including the Department of Justice, relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it shall be included with any information disclosed. (Welf. & Inst. Code, § 828.)

13) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor may petition the court in which the proceedings occurred or, if there were no

court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances. (Pen. Code, § 851.7.)

14) Provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including arrest records and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted, or the charges dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code, § 1203.45, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As recent reforms have expanded diversion programs throughout California, some of the code sections meant to ensure the confidentiality of youth police records have become outdated. AB 2425 will update those code sections to ensure that youth who go through diversion programs are protected from the negative collateral consequences of a police record they weren't aware existed. This bill will prevent records that should remain confidential from being disseminated and used against juveniles who were diverted from the juvenile justice system."

2) **Sealing and Dismissals of Juvenile Records**: Juvenile court records generally must be destroyed when the person of record reaches the age of 38 unless good cause is shown for maintaining those records. (Welf. & Inst. Code, § 826.) The person of record also may petition to destroy records retained by agencies other than the court. (Welf. & Inst. Code, § 826, subd. (b).) The request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 826.) When records are destroyed pursuant to the above provision, the proceedings "shall be deemed never to have occurred, and the person may reply accordingly to an inquiry." (Welf. & Inst. Code, § 826, subd. (a).) Courts have held that the phrase "never to have occurred" means that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court (Christal B.)* (1989) 212 Cal.App.3d 1261, at 1267.)

   Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) To seal a juvenile court record, either the minor or the probation department must petition the court. (*Ibid.*) Juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a).) The records are not sealed if the person of record has been convicted of a felony or a misdemeanor involving moral turpitude. (*Ibid.*) No offenses listed in Welfare and Institutions Code section 707, subdivision (b) may be sealed if the juvenile was 14 years or older at the time of the offense. Additionally, there can be no pending civil litigation involving the incident.

In 2014, the Legislature enacted a process for automatic juvenile record sealing (i.e. without a petition from the minor) in cases involving satisfactorily-completed informal supervision or probation, except in cases involving serious offenses, namely Welfare and Institutions Code section 707, subdivision (b) offenses. (Welf. & Inst. Code, § 786.) When the record is sealed, the arrest in the case is deemed never to have occurred. (*Ibid.*) The court must order all records in its custody pertaining to the petition sealed. However, the prosecuting attorney and the probation department can access these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. Also, the court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. (*Ibid.*) Additionally in 2018, the law was amended to allow prosecutors greater access to files to locate Brady material.

3) **Need For This Bill**: The Legislature has made numerous adjustments to the juvenile record sealing statutes since they were first passed. As the law has been implemented, the need for additional confidentiality protections has arisen. According to the bill's author, "the law needs to be updated to accord with recent juvenile justice reforms that expanded diversion and prohibited certain children from entering the juvenile justice system. Ensuring the confidentiality of records for youth who have been diverted furthers the goals of both the sealing record statutes and broader reforms.

   "Current law does not distinguish between a record of a youth who is counseled and released, and a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court. The law also fails to distinguish between a juvenile police record that documents a diversion program referral, and a record that documents an arrest and subsequent referral to probation or the district attorney. Additionally, current law allows other law enforcement agencies to obtain a complete copy of the juvenile police record without notice or the consent of the youth who is the subject of the record.

   "This law provides for the sealing of probation records and diversion service provider records for youth who are referred to a diversion program by a probation officer or a prosecutor. But no such protection exists for the 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."

   According to the author, "there is ample evidence illustrating that even an arrest increases a youth's chance of further system involvement. In addition, a juvenile police record has far-reaching consequences related to access to education, housing, employment and participation in the military. Without a change to the law, youth who no longer fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will continue to suffer the negative collateral consequences of system involvement."

4) **Brady Material**: Opposition to the bill have expressed concern that the provisions of the bill making records confidential and "deemed not to exist" while the minor is completing a diversion program could hinder a prosecutor's ability to access material pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. The author should consider whether to amend the bill to address this issue by creating an exception and permit access to a sealed record if necessary to meet a statutory obligation.

5) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "Welfare and Institutions Code § 827.9 ensures the confidentiality of information gathered by law enforcement agencies related to the taking of a minor into custody, temporary custody, or detention ('juvenile police records'). It governs who may access a juvenile police record and specifically allows for other law enforcement agencies to obtain a complete copy of the record without notice or the consent of the youth who is the subject of the record. The law fails to distinguish between a record that documents an arrest and subsequent referral to probation or the district attorney and a record that documents a referral to a diversion program intended to prevent arrest or further system involvement. Nor does the law differentiate a police record that documents an encounter with a youth who is counseled and released from a record of an encounter with a youth who avoids arrest because they no longer fall within the jurisdiction of the juvenile court.

"Welfare and Institutions Code § 827.9 predates recent juvenile justice reforms that expanded diversion programs throughout the state and that prohibited certain categories of children from entering the juvenile justice system. In addition, Welfare and Institutions Code §786.5 provides for the sealing of probation records and diversion service provider records for youth who are referred to a diversion program by a probation officer or a prosecutor, but not for the sealing of juvenile police records for those same youth. Youth who participate in diversion programs at the referral of probation departments or prosecutors currently have more confidentiality protections than youth who are diverted directly by police and who avoid contact with the juvenile delinquency court system. The protections provided by Welfare and Institutions Code § 786.5 and § 827.9 need to be updated to address this gap and to respond to recent reforms.

"There is ample evidence illustrating that even an arrest increases a youth's chance of further system involvement. In addition, a juvenile police record has far-reaching consequences related to access to education, housing, employment, and participation in the military.

"AB 2425 will ensure that youth who no longer fall under the jurisdiction of the juvenile delinquency court and those who participate in diversion programs will not suffer the negative collateral consequences of system involvement by:

- Ensuring that records maintained by a diverting law enforcement agency for youth who are currently participating in a diversion program, have successfully completed a diversion program, or who no longer fall within the jurisdiction of the juvenile court are not disseminated;

- Ensuring the confidentiality of diversion program service provider records;

- Ensuring the automatic sealing of police records of youth who have satisfactorily completed diversion programming, those who have been counseled and released without a probation referral within 60 days, and youth who no longer fall under the jurisdiction of juvenile court under State law.

"California has recognized through recent legislation that all children deserve the opportunity to alter, learn, grow, and thrive in their communities. AB 2425 is a vital step to ensure that the juvenile justice reforms California has made are not undermined because of a gap in existing law that continues to harm youth. By ensuring the confidentiality of police contacts

for youth who never enter the juvenile justice system, we will further realize the intent of legislation that has and will continue to have a meaningful impact on the health and well-being of our children."

6) **Argument in Opposition:** According to the *California District Attorneys Association*, "Although we have no qualms with the general intention behind the measure, we are concerned about the "and deemed not to exist" portion of the bill, as this phrase would appear to prevent law enforcement and prosecutorial agencies from ever disclosing the existence of underlying information contained in those reports which may be considered Brady material, pursuant to Brady v. Maryland (1963) 373 U.S. 83. This constitutional requirement cannot be overriden by statute, and places a duty upon law enforcement and prosecutorial agencies to disclose that information which they possess that shows a person behaved in ways which may reflect upon their credibility if they become witnesses in a criminal prosecution.

"We have been in touch with your office and the sponsors of the bill regarding a potential amendment that would allow for such information to be accessed in order to meet Brady obligations. In the event this or a substantially similar amendment is not included, we must oppose this measure, in order to respect a criminal defendant's right to a fair trial as well as to not place in legal or ethical jeopardy California prosecutors who every day seek to uphold the constitution while ensuring public safety."

7) **Related Legislation**:

a) 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.

b) AB 2321 (Jones-Sawyer), Permits an agency to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. AB 2321 is pending before this committee.

c) AB 2426 (Reyes) clarifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas. AB 2426 is pending before this committee.

8) **Prior Legislation**:

a) 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.

b) 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.

c) 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.

d) 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.

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

f) 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.

g) 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

National Center for Youth Law (Sponsor)
Children's Defense Fund-california (Co-Sponsor)
Youth Law Center (Co-Sponsor)
Alliance for Boys and Men of Color
Asian Americans Advancing Justice - California
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Public Defenders Association
Children Now
Children's Law Center of California
Drug Policy Alliance
East Bay Community Law Center
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Fresno Barrios Unidos
John Burton Advocates for Youth
Milpa (motivating Individual Leadership for Public Advancement)
National Institute for Criminal Justice Reform
Pacific Juvenile Defender Center
Public Counsel
Root & Rebound
Ryse Center

San Francisco Public Defender
San Jose/silicon Valley NAACP
Santa Cruz Barrios Unidos INC.
The W. Haywood Burns Institute
United Friends of The Children
Young Women's Freedom Center
Youth Alive!
Youth Alliance
Youth Forward

Oppose

California District Attorneys Association
California Law Enforcement Association of Records Supervisors (CLEARS)
California State Sheriffs' Association

Analysis Prepared by: Nikki Moore / 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 2512 (Mark Stone) – As Amended May 14, 2020

SUMMARY: Authorizes a defendant in a death penalty case to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition, and revises the definition of intellectual disability. Specifically, **this bill**:

1) States that the United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

2) Revises the definition of "intellectual disability" to mean the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

3) Defines "prima facie showing of intellectual disability" to mean that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when an expert provides a declaration diagnosing the defendant as intellectually disabled.

4) Requires the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined.

5) Authorizes a defendant to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus.

6) Provides that when the claim of intellectual disability is raised in a petition for habeas corpus, and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the defendant has met the prima facie standard.

7) Specifies that the petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability.

8) Provides that the respondent may present the case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence.

9) Provides that during an evidentiary hearing under the habeas corpus provisions, an expert may testify about the contents of out-of-court statements, including documentary evidence

and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

10) Prohibits changing or adjusting the results of a test measuring intellectual functioning based on race, ethnicity, national origin, or socioeconomic status.

EXISTING LAW:

1) Establishes court procedures during death penalty cases regarding the issue of intellectual disability. (Pen. Code, § 1376.)

2) Defines "intellectual disability" as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age. (Pen. Code, § 1376, subd. (a).)

3) Authorizes a defendant to apply, prior to the commencement of trial, for an order directing that a hearing to determine intellectual disability be conducted when the prosecution in a criminal case seeks the death penalty. (Pen. Code, § 1376, subd. (b)(1).)

4) Requires the court to order a hearing to determine whether the defendant has an intellectual disability upon the submission of a declaration by a qualified expert stating the expert's opinion that the defendant is a person with an intellectual disability. (Pen. Code, § 1376, subd. (b)(1).)

5) States that the defendant's request for a court hearing prior to trial constitutes a waiver of jury hearing on the issue of intellectual disability. (Pen. Code, § 1376, subd. (b)(1).)

6) Provides that if the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. (Pen. Code, § 1376, subd. (b)(1).)

7) Specifies that the jury hearing on intellectual disability shall occur at the conclusion of the guilt phase of the trial in which the jury has found the defendant guilty with a finding that one or more special circumstances, as specified, are true, making the penalty death or life imprisonment without possibility of parole (LWOP). (Pen. Code, §§ 190.2, 1376, subd. (b)(1).)

8) Provides that the jury or court shall decide only the question of the defendant's intellectual disability. The defendant shall present evidence in support of the claim that they are a person with an intellectual disability. The prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of intellectual disability. The court may make orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. A statement made by the defendant during an examination ordered by

the court shall not be admissible in the trial on the defendant's guilt. (Pen. Code, § 1376, subd. (b)(2).)

9) Provides that the burden of proof shall be on the defendant to prove by a preponderance of the evidence that they are a person with an intellectual disability. The jury verdict must be unanimous. (Pen. Code, § 1376, subd. (b)(3).)

10) Provides that where the hearing is conducted before trial, the following shall apply:

   a) If the court finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and the criminal trial shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of first degree murder, with a true finding of one or more special circumstances, the court shall sentence the defendant to confinement in the state prison for LWOP. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Pen. Code, § 1376, subd. (c)(1).)

   b) If the court finds that the defendant is not a person with an intellectual disability, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Pen. Code, § 1376, subd. (c)(2).)

11) Provides that when the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more special circumstances is true, the following shall apply (Pen. Code, § 1376, subd. (d)):

   a) If the jury finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and sentence the defendant to confinement in the state prison for LWOP; or

   b) If the jury finds that the defendant does not have an intellectual disability, the trial shall proceed as in any other case in which the death penalty is sought by the prosecution.

12) States that in any case in which the defendant has not requested a court hearing prior to trial, and has entered a plea of not guilty by reason of insanity, as specified, the hearing on intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane. (Pen. Code, § 1376, subd. (e).)

13) Allows a person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)

14) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons (Pen. Code, § 1473, subd. (b)):

   a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration; or

b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; or

c) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. Specifies that "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

15) Provides that a writ of habeas corpus may also be prosecuted on the basis that evidence relating to intimate partner battering and its effects, as defined, was not introduced at the trial relating to the prisoner's incarceration for a conviction of a violent felony, as defined, and had such substantial and competent expert evidence been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. (Pen. Code, § 1473.5, subds. (a), (b), (c).)

16) Specifies that habeas corpus is the exclusive procedure for collateral attack on a judgment of death. (Pen. Code, § 1509.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2512 will modernize California's Statute prohibiting the execution of people with intellectual disabilities. The state has been responsible for ensuring that we do not execute people with intellectual disabilities since the 2002 US Supreme Court ruling that it is unconstitutional. Unfortunately, despite the fact that clinical standards have changed significantly over the past 17 years, the statute has not been updated. Modernizing this statute is necessary to prevent California from sentencing people with intellectual disabilities to death and to ensure that people with intellectual disabilities who are on death row are resentenced.

   "This bill will bring [the] statute up-to-date with clinical standards by requiring that evidence of an intellectual disability present 'during the developmental period' rather than 'before age 18.' It will also prohibit race, ethnicity, or national origin-based arguments to increase IQ scores and will specify that the court must appoint an expert if it is warranted by the evidence."

2) **Background**: In *Atkins v. Virginia* (2002) 536 U.S. 304, 321 (*Atkins*), the United States Supreme Court held that the Eighth Amendment forbids the execution of an intellectually disabled defendant. It is cruel and unusual punishment to impose the death penalty on a defendant with intellectual disability, then referred to as "mentally retarded." (*Atkins, supra*, 536 U.S. at p. 321; *Hall v. Florida* (2014) 572 U.S. 701.) "No legitimate penological purpose is served by executing the intellectually disabled." (*Hall v. Florida, supra*, 572 U.S. at p. 708, citing *Atkins, supra*, 536 U.S. at p. 320.)

In defining intellectual disability, the *Atkins* court referenced two clinical definitions:

> The American Association on Mental Retardation (AAMR) [now the American Association of Intellectual and Developmental Disabilities (AAIDD)] defines mental retardation as follows: 'Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.' [Citation.] [¶] The American Psychiatric Association's definition is similar: 'The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system.' [Citation.] 'Mild' mental retardation is typically used to describe people with an IQ level of 50–55 to approximately 70. [Citation.]

(*Atkins, supra*, 536 U.S. at p. 308, fn. 3.) *Atkins* left it up to the states to "'develop[] appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (*Id.* at p. 317.)

In response to *Atkins*, the California Legislature enacted Penal Code section 1376. (*In re Hawthorne* (2005) 35 Cal.4th 40, 44.) Section 1376 defines intellectual disability, formerly "mental retardation," as "the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age." (Pen. Code, § 1376, subd. (a); see Stats. 2012, chs. 448 [the Shriver "R-Word" Act, which revised various statutes to replace references to "mental retardation" with the term "intellectual disability"], 457 [similarly replacing references to "mental retardation"].).)

3) **Intellectual Disability Required Onset Before Age 18**: Intellectual disability, prohibiting capital punishment, is defined in Penal Code section 1376 as manifesting before age 18. (Pen. Code, § 1376, subd. (a).) The statute contains no provision for any intellectual disability of a defendant that did not manifest before age 18. (Pen. Code, § 1376.)

The Legislature derived this standard from the two clinical definitions referenced by the high court in *Atkins, supra*, 536 U.S. at page 309, footnote 3. (*In re Hawthorne* (2005) 35 Cal.4th 40, 47-48.) However, one of the standards has since changed:

> Intellectual disability has long been categorized as a developmental condition with an onset prior to the end of the developmental period. Although U.S. federal law (Developmental Disabilities Act of 2000; PL 106-402) has defined the end of the developmental period to be age 22 years for developmental disabilities, the end of the developmental period for intellectual disability had

> historically been set at age 18 years (see: Schalock et al., 2010; American Psychiatric Association, 2000). In its most recent revision of the Diagnostic and Statistical Manual for Mental Disorders, the American Psychiatric Association has left the chronological age of cut-off defining the "developmental period" up to the clinician and their clinical judgement (see: American Psychiatric Association, 2013).

< https://www.apa.org/pi/disability/resources/publications/newsletter/2016/09/intellectual-disability > [as of March 31, 2020].)

This bill would update the definition of "intellectual disability" to include conditions that manifest before the end of the developmental period, as defined by clinical standards.

4) **Practice of Adjusting IQ Scores Based on Race**: Penal Code section 1376 does not contain any IQ requirement, as has been barred by the United States Supreme Court. (*Hall v. Florida, supra*, 572 U.S. at p. 724.) The Court stated, "When a defendant's IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits." (*Id* at p. 723.) Thus, while not necessarily conclusive, IQ continues to play a major role.

"Here's where 'ethnic adjustments' come in. The practice, as documented by attorney Robert Sanger in a 2015 article in the *American University Law Review*, adjusts IQ scores upward for people of color convicted of capital crimes. According to Sanger, prosecutors in Florida, Texas, Alabama, Tennessee, Missouri, California, Pennsylvania, and Ohio have all used ethnic adjustments to successfully impose the death penalty on people who otherwise might have been deemed exempt. In his article, Sanger works methodically through case after case, noting in particular the role played by expert witnesses for the prosecution, who testify to the racial biases of IQ testing. In most cases, these experts have never met the person convicted of the capital crime or assessed that person for disability, even as their testimony clears the way for execution." (< https://psmag.com/social-justice/how-iq-tests-are-perverted-to-justify-the-death-penalty > [as of March 31, 2020].)

In the article, Sanger concludes that, viewed objectively, "the practice of 'ethnic adjustments' does not survive strict logical, clinical, or constitutional scrutiny." (Robert Sanger, *IQ, Intelligence Tests, 'Ethnic Adjustments' and Atkins* (Oct. 2015) American University Law Review, Vol. 65, at p. 148 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2706800 > [as of March 31, 2020].) "By any objective reading of the extensive case law from the U.S. Supreme Court, 'ethnic adjustments,' which qualify people of color for the death penalty by adjusting scores based solely on their race, are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment." (*Ibid.*)

This bill would prohibit "ethnic adjustments" of IQ scores.

5) **Requirement of an Expert Declaration**: Once a defendant submits an expert declaration opining that the defendant is a person with an intellectual disability, the court must order a hearing to determine the issue. (Pen. Code, § 1376, subd. (b)(1).) This bill would loosen the requirement. The defendant would instead be required to make a "prima facie showing of intellectual disability." This could be based on either [1] an expert declaration diagnosing the

defendant as intellectually disabled or [2] the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards.

According to information provided by the author's office, this change is needed because "…in reality, some people on death row do not have the resources to hire an expert. In some cases, people do not receive funding for an expert until their case reaches federal court, which can take over a decade – at which point the case is returned to the state court to litigate the issue."

6) **Post-Conviction Proceedings**: The California Supreme Court has provided guidance on how a defendant may pursue a post-conviction claim of intellectual disability. The claim should be raised by a petition for writ of habeas corpus. (See *In re Hawthorne* (2005) 35 Cal.4th 40, 47.)

Though by its terms, the standards and procedures set forth in Penal Code section 1376 apply only to pre-conviction proceedings, our state High Court has concluded that post-conviction proceedings should "track[] section 1376 as closely as logic and practicality permit…." (*In re Hawthorne, supra,* 35 Cal.4th at p. 47.) This is warranted "both to maintain consistency with our own legislation and the judicial frameworks adopted in other jurisdictions and to avoid due process and equal protection implications. (*Ibid.*)

This bill would codify post-conviction relief for claims of intellectual disability via a petition for writ of habeas corpus. This bill would also codify a hearsay exception in post-conviction proceedings, allowing experts on intellectual disability to testify to out-of-court statements that they used in forming their opinion. (See *post*, Expert Testimony Based on Out-of-Court Statements in Post-Conviction Proceedings.)

The bill contains no similar hearsay provision for pre-conviction proceedings. (*In re Hawthorne, supra,* 35 Cal.4th at p. 47.) According to proponents of this bill, the use of hearsay statements is necessary in post-conviction proceedings due to the length of time it takes to litigate a death penalty claim, and the possible unavailability of witnesses of the defendant's early childhood behavior on which an expert may have relied in forming an opinion.

7) **Expert Testimony Based on Out-of-Court Statements in Post-Conviction Proceedings**: The Evidence Code prohibits, except as provided by law, the admission of hearsay, which is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subds. (a), (b).)

In *Sanchez*, the California Supreme Court clarified the evidentiary rules applicable to expert witnesses who rely on hearsay for purposes of their expert opinions. The court explained that an expert cannot "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*People v. Sanchez* (2016) 63 Cal.4th 665, 686.) Further, in cases where the Sixth Amendment applies, there is a confrontation clause violation when a prosecution expert seeks to relate testimonial hearsay. (*Ibid.*)

That being said, medical diagnoses based on reported symptoms were recognized as a hearsay exception even at common law. (*Sanchez, supra*, 63 Cal.4th at p. 678.) Under the Evidence Code, medical and hospital records, if properly authenticated, may also fall within the business records exception. (Evid. Code, §§ 1271, 1560, 1561, 1562; see *Sanchez, supra,* 63 Cal.4th at p. 675 [medical records and patient's statements may qualify for hearsay exceptions].)

This bill would clarify that the common law hearsay exception for medical diagnoses extends to intellectual disability diagnoses in post-conviction capital cases; it would codify an exception allowing experts to testify to out-of-court statements on which they relied for their intellectual disability diagnosis. This could include the expert's review of records, interviews, etc.
(<https://www.apa.org/pi/disability/resources/publications/newsletter/2016/09/intellectual-disability >[as of April 30, 2020].)

8) **Argument in Support**: According to the *San Francisco Public Defender's Office*, "AB 2512 (Stone) [will] modernize our state statute regarding intellectual disabilities and death row. AB 2512 will ensure that individuals with intellectual disabilities are quickly and accurately identified, in order to prevent California from sentencing people with intellectual disabilities to death row and to ensure that people with intellectual disabilities who are currently on death row are resentenced.

....

"The US Supreme Court ruled that it is unconstitutional to execute someone with an intellectual disability in 2002. The following year, the California Legislature added Penal Code section 1376 to implement this decision. Since it was enacted, this code section has only been amended once, in 2012, to change term 'mental retardation' to 'intellectual disability.' The statute is now out[ ]of-date and as a result, people with intellectual disabilities continue to face death sentences and remain on death row for decades.

"AB 2512 (Stone) will make four important changes to the statute:

1) Change the requirement that evidence of the disability present 'before age 18' to 'during the developmental period,' making the statute consistent with current clinical standards;

2) Prohibit arguments to increase IQ scores that are based on race, ethnicity, national origin or socio-economic status;

3) Allow a person facing a death sentence to establish intellectual disability by requiring the court to appoint an expert if warranted by the evidence; and

4) Clarify that experts on intellectual disability may testify to out-of-court statements that they used in forming their opinion in post-conviction proceedings.

"Our organization is opposed to the death penalty in all circumstances as unjust and inhumane. We are particularly troubled that California continues to send people with intellectual disabilities to death row and that those individuals must spend decades fighting in

court to be resentenced. We were shocked and outraged to learn that prosecutors are using race-based arguments in an effort to keep people on death row. We strongly support AB 2512 (Stone) as urgently needed to address these issues."

Argument in Opposition: According to the California District Attorney's Association, "AB 2512 was reviewed by the Capital Litigation Committee of CDAA which noted that the bill is unnecessary as current law protects all capital defendants under *Atkins* (*Atkins v. Virginia* 56 U.S. 304). Moreover, the bill would create a vague and prejudicial loophole that would result in a miscarriage of justice for all murder victims and their loved ones.

"When a person is born with an intellectual disability, it is clear and unambiguous. Reputable mental health experts and clinicians agree that this intellectual disability manifests itself well before the age of 18.

"The proposed legislation would permit the following injustices to murder victims and their families:

- The proposed bill no longer requires a Qualified Expert under the *Atkins* case law.
- The proposed bill no longer requires a specific definition of intellectual disability.
- The proposed bill is vague as it allows for a single clinician to appear and testify that someone developed a disability at any time before the end of the developmental period, which the bill does not define.
- The proposed bill is unjust because a single clinician could testify that a capital defendant developed an intellectual disability for the very first time in his/her twenties or thirties.
- The proposed bill is flawed because it does not account for a capital defendant who is not intellectually disabled, but who suffered a cognitive injury after the age of 18. (Of course, the adult cognitive injury, if true, would be admissible as to mental state and/or mitigation.)
- The proposed bill is unjust and unfair because it eliminates any expert standard and is therefore constitutionally vague and subject to abuse at the expense of crime victims and their families.

"Assembly Bill 2512 would result in a tremendous abuse of judicial resources as it inappropriately allows for a capital defendant to raise the issue of disability – not during pre-trial, trial or sentencing – but for the very first time on habeas. This would create a substantial waste of judicial resources and result in more injustice to families of victims who are not involved in the habeas proceedings.

"For these reasons, CDAA is strenuously opposed to this measure as it will only serve to further impair the rights of victims of the most violent and depraved murderers."

9) **Related Legislation**:

a) AB 2200 (Kalra), of the 2019-2020 Legislative Session, would prohibit the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or country of origin, and codify the right to habeas corpus relief on this ground. AB 2200 is pending hearing in the Assembly Committee on Public Safety.

10) **Prior Legislation**:

a) SB 1381 (Pavley), Chapter 457, Statutes of 2012, revised specified laws that referred to mental retardation or a mentally retarded person to refer instead to intellectual disability or a person with an intellectual disability.

b) SB 3 (Burton), Chapter 700, Statutes of 2003, established standards regarding mental retardation for the purpose of death penalty cases as required by the United States Supreme Court.

c) SB 51 (Morrow), of the 2003-2004 Legislative Session, would have set up standards regarding mental retardation for the purpose of death penalty cases as required by the US Supreme Court. SB 51 failed passage in the Senate Committee on Public Safety.

d) AB 557 (Aroner), of the 2001-2002 Legislative Session, would have established court procedures in death penalty cases regarding the issue of mental retardation. AB 557 died in the Assembly pending concurrence in Senate amendments.

REGISTERED SUPPORT / OPPOSITION:

Support

8th Amendment Project
American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties
Asian Americans Advancing Justice - California
California Anti-death Penalty Coalition
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association
California United for A Responsible Budget (CURB)
Disability Rights California
Ella Baker Center for Human Rights
Equal Justice USA
Friends Committee on Legislation of California
Initiate Justice
National Association of Social Workers, California Chapter
Nextgen California
Re:store Justice
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) Bay Area
State Council on Developmental Disabilities

Oppose

California District Attorneys Association

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