AGENDA

9:00 a.m. – June 11, 2019
State Capitol, Room 126

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11. SB 257 (Nielsen)  Mr. Fleming  Firearms: prohibited persons.
13. SB 284 (Beall)  Ms. Moore  Juvenile justice: county support of wards.
15. SB 399 (Atkins)  Ms. Black  Commission on Peace Officer Standards and Training.
16. SB 557 (Jones)  Mr. Billingsley  Criminal proceedings: mental competence: expert reports.
17. SB 701 (Jones)  Mr. Billingsley  Firearms: prohibited persons.

Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.
Date of Hearing: June 11, 2019
Counsel: Nikki Moore

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

ACR 91 (Jones-Sawyer) – As Introduced May 7, 2019

SUMMARY: Designates June 2019 as Second Chances Month which highlights services and events to support reentry from incarceration. Specifically, this resolution:

1) States that mass incarceration and failed criminal justice policies have emphasized incarceration over rehabilitation and prevention for years, resulting in as many as one in four Californians having a criminal record.

2) States that after completing a jail or prison sentence and prescribed supervision requirements by the court, individuals face difficulties in successfully returning to their communities.

3) States that reducing barriers to reentry contributes to public safety by reducing recidivism, increasing the economic well-being of entire communities, and allowing individuals the opportunity to seek a better life for themselves and their families and contribute to society in a positive and meaningful way.

4) States that nationally 80 percent of employers perform criminal background checks on prospective employees. However, some agencies that perform background checks report inaccurate information, causing employers to be less likely to hire system-impacted individuals. Sixty percent of formerly incarcerated individuals are unemployed a year after their release. Those who do find jobs are paid 40 percent less than those without criminal records.

5) States that California’s criminal justice reform efforts are moving from a system focused on punishment, exclusion, economic barriers, and lifetime bans to a system focused on prevention, rehabilitation, upward mobility, reintegration, and economic stability. The reform efforts recognize that these changes create economic and other opportunities for system-impacted individuals.

6) States that in 2014, California voters passed Proposition 47 which reduced certain low-level, nonviolent offenses to misdemeanors.

7) States that AB 1115 (Jones-Sawyer), of the 2017–18 Legislative Session, and AB 651 (Bradford), of the 2013–14 Legislative Session, created a process for an individual to remove felony convictions from his or her criminal record. However, many system-impacted individuals are still not aware of this opportunity.

8) States that California continues to encourage enhanced collaboration between counties and law enforcement agencies. The state recognizes that a system for identifying eligible Proposition 47 applicants is essential to enhancing the link between record correction and
employment opportunities, creating an accurate and efficient background check process, and increasing access to mental health treatment, substance abuse treatment, health services, supportive housing, and support services for the formerly incarcerated.

9) Resolves that the Legislature acknowledge and commend Californians for Safety and Justice for its efforts in supporting our system-impacted community.

10) Resolves that the Legislature designate June 2019 as Second Chances Month in California, highlighting existing services and events to support reentry, such as access to free RAP sheets, employment support, fair chance hiring, and the Summer of Second Chances to be held during the summer of 2019.

11) Resolves that Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, “As Chair of the Assembly Public Safety Committee, I am committed to making sure we are providing every tool and resource available to reduce recidivism and give the formerly incarcerated a second chance. It is unfair to expect them to thrive in society upon their reentry when they are faced with barriers that prevent them from being successful. It is time we move away from a system focused on punishment, exclusion, and lifetime bans and instead towards one that ensures incarcerated individuals are able to successfully reenter society with the skills and training needed to lead productive lives.”

2) **Background**: According to the author, “Failed criminal justice policies, focusing on punishment instead of rehabilitation, have contributed to one in four Californians having a criminal record.

“For many formerly incarcerated individuals, having a criminal record has created barriers to securing housing and employment, as well as preventing them from participating in the democratic process. By reducing these additional challenges and moving towards a mindset of prevention and rehabilitation, these individuals can be given the chance to increase their economic wellbeing and seek better opportunities for themselves. This inherently can contribute to lower recidivism levels and overall better outcomes for the community.

“Currently, as a result of criminal background checks and reported misinformation, system impacted individuals are less likely to be hired and have difficulty in acquiring housing. Around 60% of formerly incarcerated individuals are unemployed a year after their release, with even those who do have jobs earning around 40% less. Furthermore, the Prison Policy Initiative reported that formerly incarcerated people are 10 times more likely to be homeless than the general public.

“Given these statistics, there has recently been a push for criminal justice reform with Californians supporting Proposition 47 to reduce low-level, nonviolent offenses to
misdemeanors as well as numerous states across the country also recognizing Second Chances Month annually since 2017.”

3) **Argument in Support:** According to *Californians for Safety and Justice*, “Evidence has shown that mass incarceration and failed criminal justice policies have emphasized incarceration over rehabilitation and prevention for years, resulting in as many as 1 in 4 Californians possessing a criminal record; and after completing a jail, or prison sentence and prescribed supervision requirements by the Court, individuals still face difficulties to successfully returning to their communities.

“Far too often, individuals who have served their time are treated as second class citizens, barred from housing, employment, and the democratic process.

“Reducing barriers for these citizens contributes to public safety by reducing recidivism and increasing the economic well-being for the entire community and allows individuals to successfully reacclimate back into society.

“Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles to employment. Nearly 90% of employers, 80% of landlords, and 60% of colleges screen applicants’ criminal records.

“Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a great cost to California’s economy. Nationally, it has been estimated that the U.S. loses roughly $65 billion per year in terms of gross domestic product due to employment losses among people with convictions.”

4) **Prior Legislation:**

a) ACR 219 (Jones-Sawyer), Chapter 107, Statutes of 2018, designates June 2018 as Second Chances Month which highlights services and events to support reentry from incarceration.

b) AB 1115 (Jones-Sawyer), Chapter 207, Statutes of 2017, enables individuals sentenced to state prison for a felony, that if committed after enactment of the 2011 Realignment legislation would have been eligible for county jail sentencing, to obtain expungement relief.

c) AB 651 (Bradford), Chapter 787, Statutes of 2013, authorizes a court, in its discretion and in the interests of justice, to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to criminal justice realignment if specified conditions are satisfied.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

A New Way of Life
Building Opportunities for Self-Sufficiency
Californians for Safety and Justice
Communities in Schools
Crime Survivors for Safety and Justice
Homeboy Industries
Pillars of the Community
Project Kinship

Opposition

None

Analysis Prepared by:  Nikki Moore / PUB. S. / (916) 319-3744
ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AJR 17 (Ramos) – As Introduced April 11, 2019

SUMMARY: Calls on the federal government to enact legislation to better collect and share data on missing and murdered Native American women and girls. Additionally urges the California Attorney General to develop better ways to transfer and share this data between local, state, federal and tribal governments. Specifically, this resolution:

1) Finds that Native American women are being murdered and sexually assaulted on tribal lands and surrounding areas at higher rates than non-Native women.

2) Finds that homicide is the third leading cause of death among Native American women and girls between 25 and 34 years of age, and the fifth leading cause of death between 25 and 34 years of age.

3) States that the United States Department of Justice found that Native American women are being murdered at rates more than 10 times the national average, and the majority of these murders are committed by non-Native people on tribal lands.

4) Finds that in 2016, the National Crime and Information Center highlighted approximately 6,000 reports of missing Native American and Alaskan Native women and girls, but the United State Department of Justice’s National Missing and Unidentified Persons System only reported 116 cases.

5) States that a study by the Urban Indian Health Institute (UIHI) found that the lack of accurate data on missing and murdered Native American women and girls stems from deeply rooted institutional bias throughout the country, which results in the systemic oppression of Native American and Alaskan women and girls.

6) Finds that these reasons are why cases on missing and murdered Native American women and girls go unreported, uninvestigated, and unsolved.

7) Finds that California is home to more people of Native American and Alaskan Native heritage than any other state in the country and represents 12 percent of the total Native American population, according to the 2010 United States Census.

8) Affirms the Legislature’s commitment to prioritize working towards solutions directly related to missing and murdered Native American women and girls.

9) Finds that it is paramount for immediate comprehensive solutions to be put forward to accurately investigate, document and share data related to missing and murdered Native American women and girls between federal, state, county, and tribal entities.
10) Resolves that the Assembly and the Senate of the State of California jointly urge the Attorney General of the State of California to begin the collection of data as it relates to missing and murdered Native American women and girls.

11) Resolves that the Assembly and the Senate of the State of California jointly urge Congress to swiftly enact Senate Bill 982, the Not Invisible Act, and other legislation to strengthen communication between federal, state, local and tribal officials.

12) Resolves that the Assembly and Senate of the State of California jointly urge the United States Department of Justice, United States Department of the Interior, and United States Department of Health and Human Services to seek recommendations from tribes on enhancing the safety of Native American women and girls.

13) Resolves that the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Minority Leader of the House of Representatives, to the Majority Leader of the Senate, to the Minority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

EXISTING LAW:

1) 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, subd. (a).)

2) States that the program shall target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs. (Pen. Code, § 13847, subd. (a).)

3) Specifies that the Director of Emergency Services may allocate and award funds to local units of government for purposes of the program. (Pen. Code, § 13847, subd. (b).)

4) Requires the Director of Emergency Services to issue administrative guidelines and procedures for the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, subd. (d).)

5) Requires the Attorney General to establish and maintain the Violent Crime Information Center to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The center is required to, among other things, assist local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing person’s cases, as well as provide statistics on missing at-risk adults and children. (Pen. Code, § 14200.)

6) States that a law enforcement agency may request a copy of information or data maintained by the Department of Justice, for the purpose of linking an unsolved missing or unidentified person case with another case that was previously unknown to be related to that case, or for the purpose of resolving an unsolved missing or unidentified person case. (Pen. Code, §
7) Specifies that within the Department of Justice (DOJ), there shall be a director responsible for coordinating California’s response to missing persons. (Pen. Code, § 14208.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author’s Statement: According to the author, “Native American women and girls are facing an epidemic of violence that is killing them at far higher rates than any other group in the country. A study by the Urban Indian Health Institute (UIHI), found that California is number six on the top ten states with highest number of missing and murdered Native American women and girls (MMIWG) cases, and San Francisco is one of the top 10 cities with the highest number of MMIWG in the U.S. As a California Native American, it is imperative that we bring awareness to this epidemic and identify opportunities to solve this crisis.”

2) California Statistics: According to the UIHI, California is one of the states with the highest number of cases involving missing and murdered indigenous women (40). The National Crime Information Center reports that, in 2016, there were 5,712 reports of missing American Indian and Alaska Native women and girls, though the US Department of Justice’s federal missing person’s database, NamUs, only logged 116 cases. (See Urban Indian Health Institute, Missing and Murdered Indigenous Girls, http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf.)

3) National Efforts: The issue of missing and murdered indigenous women is being raised at the national level. Among others, two bills have been introduced in the 116th Congress. Senate Bill 992 (Not Invisible Act) and Senate Bill 227 (Savanna’s Act). The Not Invisible Act would establish an advisory committee on violent crime against Native American women and girls, comprised of law enforcement, tribal leaders, survivors and their families. It was introduced on 4/2/19 and has since been referred to the Committee on Indian Affairs. (https://www.congress.gov/116/bills/s982/BILLS-116s982is.pdf.) Savanna’s Act would increase coordination among police departments, increase data collection and sharing and empower tribal governments with more resources. It was introduced on 1/25/19 and has since been referred to the Committee on Indian Affairs. (https://www.congress.gov/116/bills/s227/BILLS-116s227is.pdf.)

4) Need for Data: Lack of data on American Indian and Alaska Natives living in urban areas creates the misperception that the issue of missing and murdered indigenous women doesn’t touch indigenous communities outside of reservations/villages. No research has been done on rates of violence among urban indigenous populations, despite the fact that approximately 71% of American Indian and Alaska Natives now live in urban areas. According to the National Institute of Justice, more than 80% of indigenous women have experienced sexual or psychological violence in their lifetime. (See Salam, Native American Women Are Facing a Crisis, New York Times (April 12, 2019), https://www.nytimes.com/2019/04/12/us/native-american-women-violence.html.) UIHI identified 506 cases of missing and murdered Native American women and girls in 71 cities, 153 of which do not exist in any law enforcement records. (page 8, http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-

6) **Related Legislation:**

   a) **AB 1653 (Frazier)** would create 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) **ACR 83 (Ramos)** would designate the month of May 2019 as California’s Missing and Murdered Indigenous Women and Girls Awareness Month. ACR 83 was adopted and ordered to the Senate.

7) **Prior Legislation:** SB 846 (Galigianni), Chapter 432, Statutes of 2014, specified that law enforcement agencies in California may request information or data maintained by the DOJ for the purpose of linking unsolved missing or unidentified persons cases, for the purpose of resolving these cases, as specified.

**Analysis Prepared by:**  Lorraine Black / PUB. S. / (916) 319-3744
SUMMARY: Requires 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 requires 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. Specifically, this bill:

1) States that 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:

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

   b) 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.

2) States that a 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:

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

   b) 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 shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified.

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 should occur:
a) A law enforcement agency in whose jurisdiction a specified sex offense occurred should 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 should 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) Encourages DNA analysis of rape kit evidence within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code § 680 (b)(6).)

5) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code § 680 (b)(7)(A)(i).)

6) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code § 680 (b)(7)(A)(ii) and (E).)

7) 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) Encourages crime labs to do one of the following:

a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or

b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code § 680 (b)(7)(B).)

9) 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))

10) 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).)

11) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Pen. Code §§ 680 (e) and (f), 803.)

12) Provides that a criminal complaint for a registrable sex offense may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing as specified. (Pen. Code, § 803, subd. (g).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

1) **Author's Statement:** According to the author, “Senate Bill 22 will help to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault. It is critically important that any DNA evidence left behind by the attacker is
processed quickly so that law enforcement authorities can identify and prosecute rapists and we can put them behind bars—where they belong. It is unacceptable for a rape kit to ever sit on a shelf somewhere untested, since that rape kit represents a person and testing that kit can also help keep potential victims safe.’

2) **Sexual Assault Kits:** 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. (National Institute of Justice (NIJ), *Sexual Assault Kits: Using Science to Find Solutions*, Sept. 10, 2015, available at: [https://nij.gov/unsubmitted-kits/Pages/default.aspx](https://nij.gov/unsubmitted-kits/Pages/default.aspx) [as of June 6, 2019].)

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/ncj/233279.pdf](https://www.ncjrs.gov/pdffiles1/ncj/233279.pdf), [as of June 6, 2019].)

3) **Combined DNA Index System (CODIS):** 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 here, 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](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.)*

4) **Unsubmitted Sexual Assault Kits:** California law currently encourages, but does not require any agency to send a sexual assault kit to a crime lab. Recently, however, legislation has been enacted that encourages such transfers. (Pen. Code, § 680, subd. (b)(7)(A).) 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. (USDOJ’s National Institute of Justice, *supra.*

A 2014 report by the 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 June 6, 2019].) 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.” (Id. 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/SAKI117.pdf [as of June 6, 2019].)

Testing unsubmitted kits may be particularly effective in California, which passed Proposition 69 in 2004, requiring all persons arrested or charged of a felony to submit DNA samples. (Pen. Code, § 296.) For example, a serial offender is currently “awaiting trial in Alameda County Superior Court for sexual assaults against five women ranging in age from 15 to 46, and for the 2015 killing of one rape victim, Randhir Kaur, who was a UCSF dental student. All of the cases are linked by DNA evidence.” In one of his earlier cases from 2008, the law enforcement agency did not get the sexual assault kit tested, which, if they had, could have identified him as he was in the national DNA database for a 2005 felony gun conviction. (Gutierrez and Veklerov, San Francisco Chronicle, Efforts to Clear California’s Rape Kit Testing Backlog Fall Short, Mar. 17, 2018, available at: https://www.sfcchronicle.com/news/article/Efforts-to-clear-California-s-rape-kit-testing-12760627.php [as of June 6, 2019].)

5) The Need for this Bill: Existing law provides that law enforcement agencies should either submit sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence or insure that rapid turnaround DNA program in in place. This bill would require law enforcement to take one of these actions.

Existing law also encourages a crime lab that receives sexual assault forensic evidence to either process the evidence, create DNA profiles and upload qualifying DNA profiles into CODIS or transmit the sexual assault forensic evidence to another crime lab as soon as
practically possible but no later than 30 days after receiving the evidence. This bill instead provides that these actions shall be taken.

Although this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill (http://www.endthebacklog.org/california) – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource to keep up with the influx of new kits.

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.

6) Governor Brown’s Veto Message on SB 1449: Last year the author introduced SB 1449, which was nearly identical to this bill. SB 1449 was vetoed by Governor Brown, who stated:

“I am returning Senate Bill 1449 without my signature.

“This bill would require the testing of all sexual assault forensic evidence kits within a specified period of time.

“The state budget that I signed this year includes a one-time total of $7.5 million General Fund to test rape kits-$1 million to begin conducting an audit of untested kits and $6.5 million to help test the existing known backlog.

“While I fully support the goal of this bill, I believe that we should allow for the completion of the audit mandated by AB 3118 (Chiu)-which I am signing today-as well as for the Department of Justice to further reduce the existing backlog using the recently approved significant funding increase. I would like to allow time for this year’s legislative actions to take effect so we can gauge the appropriate next steps and budget accordingly.”

7) Argument in Support: According to the bill’s co-sponsor, the Joyful Heart Foundation, “Every 98 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 to collect evidence left behind in the assault. A doctor or nurse will conduct the examination, which can last between four and six hours, and collect evidence in what is commonly called a rape kit. Survivors—and the public—expect that these kits will be used to apprehend offenders. Far too often, these kits are not submitted to crime labs for testing and are simply shelved in law enforcement storage.

“S.B. 22 amends language of existing California law, which merely encourages law enforcement agencies to submit kits for testing. The Sexual Assault Victims’ DNA Bill of Rights states that sexual assault forensic evidence received after January 1, 2016 should be submitted for testing within 20 days, that laboratories should test the kit and submit DNA evidence as soon as possible but within 120 days, and a transferred kit’s DNA evidence
should be uploaded as soon as possible but within 30 days.”

8) **Argument in Opposition:** According to the *California Public Defender’s Association*, “How crime laboratories allocate their 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 and not more important than other types of forensic testing such as firearms analysis, fingerprint comparison and trace evidence analysis. Moreover, because this bill would prioritize the testing of evidence from any sexual assault cases over testing from any other serious and violent crimes, regardless of the relative importance of those test results in prosecuting the charged offense, it might actually jeopardize successful prosecutions for serious crimes. Additionally, the need to meet the stringent and categorical time limits imposed by this bill will delay DNA testing which could lead to an incarcerated or imprisoned person’s exoneration and freedom.”

9) **Related Legislation:**

   a) AB 358 (Low), would require the creation of a statewide tracking system to allow a victim of a sexual assault crime to monitor the status of the processing and testing of a sexual assault forensic exam related to their case. AB 358 was held on the Assembly Appropriations Committee Suspense File.

   b) AB 1496 (Frazier), is nearly identical to this bill, but would only require the prompt testing of sexual assault kits as of 2020 and for kits collected prior to then would have a relaxed timeline for submission and testing. AB 1496 was held on the Assembly Appropriations Committee Suspense File.

10) **Prior Legislation:**

   a) 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.

   b) SB 1449 (Leyva), of the 2017 – 2018 Legislative Session, was nearly identical to this bill. SB 1449 was vetoed by Governor Brown.

   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.

i) AB 322 (Portantino), of the 2011-2012 Legislative Session, would have established a pilot project administered by the DOJ. The project would have required ten counties to open and test all rape kits collected from July 1, 2012, to December 31, 2014. AB 322 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Co-Sponsor)
Joyful Heart Foundation (Co-Sponsor)
Natasha's Justice Project (Co-Sponsor)
Santa Barbara Women's Political Committee (Co-Sponsor)
California District Attorneys Association
California Police Chiefs Association
Change for Justice
National Association of Social Workers, California Chapter
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Stonewall Democratic Club
Students Against Sexual Assault
UCSB Lobby Corps

Oppose

California Public Defenders Association
SUMMARY: Requires each pretrial services agency that uses a pretrial risk assessment tool to regularly validate the tool, and to make specified information regarding the tool publicly available. Specifically, this bill:

1) States legislative intent to understand and reduce biases based on race, ethnicity, gender, age, economic circumstances, and behavioral or developmental disabilities in pretrial release decision making.

2) Requires any pretrial risk assessment tool used by a pretrial services agency to be validated by January 1, 2021, and on a regular basis thereafter, but at least once every three years.

3) Defines “validated,” as specified.

4) States that validation of a pretrial risk assessment tool shall use the most recent data collected by the agency within its jurisdiction. If that data is unavailable, the agency may use the most recent data collected by a similar pretrial services agency in a similar jurisdiction in the state.

5) Allows a pretrial services agency to coordinate with the Judicial Council for purposes of validation.

6) Mandates the Judicial Council to maintain a list of agencies that have complied with the validation requirement.

7) Requires pretrial services agencies to collect the following data regarding any risk assessment tool that it uses:

a) Input information, including, but not limited to, both of the following:

   i) The age, gender, ethnicity, and arrest offense for each individual assessed using the pretrial risk assessment tool; and

   ii) The total number of individuals assessed.

b) Performance measures, including, but not limited to, all of the following:

   i) The number of interviews and assessments conducted on eligible detained individuals;

   ii) The number of assessed individuals, aggregated by risk level;
iii) The number of cases in which the detention or release recommendation by the agency conducting the assessment does not conform with the release or detention decision of the judicial officer;

iv) The rate at which the pretrial assessment staff conducting the assessments follows pretrial risk assessment criteria when recommending release or detention; and,

v) The rate at which judicial officers follow the detention or release recommendation of pretrial risk assessment staff; and,

vi) The rate at which judicial officers make a pretrial detention decision that is more restrictive than the release recommendation of pretrial risk assessment staff.

c) Outcome measures, including, but not limited to, all of the following:

i) The percentage and raw number of assessed and released individuals who make all scheduled court appearances;

ii) The percentage and raw number of assessed and released individuals who are not charged with a new offense during the pretrial stage;

iii) The percentage and raw number of assessed and released individuals who are not arrested for a new offense during the pretrial stage;

iv) The percentage and raw number of assessed and supervised individuals whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct;

v) The percentage and raw number of assessed and released individuals who violated conditions of release that resulted in revocation of pretrial release; and,

vi) The percentage and raw number of assessed and released individuals who appear for scheduled court appearances, are not charged with any new offense during pretrial supervision, and did not receive a court remand.

d) All of the following data:

i) The number of individuals released, aggregated by release types, ordered during a specified timeframe;

ii) The number of supervised defendants divided by the number of pretrial officers or case managers;

iii) The time between the pretrial services agency’s assumption of supervision of an individual and the end of supervision of the individual; and,

iv) The proportion of pretrial defendants who are detained at any point throughout pretrial case processing.

8) Requires a pretrial services agency to make specified information regarding its pretrial risk assessment tool publicly available.
9) Requires a pretrial services agency to publish a report on its internet website with specified aggregate data. The report must be published by July 1, 2021, and yearly thereafter.

10) Requires the Judicial Council to maintain a list of pretrial service agencies that have satisfied the validation requirement and complied with transparency requirements.

EXISTING LAW:

1) Authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on their own recognizance (OR). (Pen. Code, § 1318.1, subd. (a).)

2) States that whenever a court has employed investigative staff for the purpose of recommending whether a defendant should be released on OR, an investigative report shall be prepared in all cases involved in a violent felony, as specified, or a felony violation of driving under the influence and causing bodily injury to another person, recommending whether the defendant should be released on OR. The report shall include specified information. (Pen. Code, § 1318.1, subd. (b).)

3) Authorizes a court or other magistrate who could release a person from custody upon giving bail to release a person who has been arrested for, or charged with, any offense other than a capital offense, on the person’s OR. (Pen. Code, § 1270.)

4) States that a person charged with a misdemeanor is entitled to an OR release unless the court makes a finding on the record, with public safety as the primary consideration, that an OR release will compromise public safety or will not reasonably assure the appearance of the defendant as required. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, under which the defendant shall be released. (Id.)

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

6) Specifies the conditions for a defendant’s release on OR. (Pen. Code, § 1318.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “Currently, 49 of 58 California counties use one of eight different pretrial risk assessment instruments to help determine the likelihood that an arrestee will commit a new offense prior to trial, or miss his or her next court date. Generally, these tools use large data sets regarding past trends to predict future outcomes, and assist judges in making release or detention decisions prior to a defendant’s trial. However, despite their widespread use, these tools lack the transparency necessary for honest evaluation and elimination of disparate outcomes, and counties are under no obligation to collect the data necessary to ensure their accuracy.”
2) **Pretrial Services:** According to the California Association of Pretrial Services Website, pretrial services agencies are important because they improve the court’s release and detention decision-making process. They also protect public safety by ensuring that only those defendants who can safely be released are released. Use of pretrial services agencies also increases the use of non-financial release alternatives, which reduces the percentage of pretrial detainees in the jail. Finally, pretrial services agencies can save taxpayer dollars by reducing the costs of jailing pretrial defendants (http://pretrialservicesca.org/about)

Services provided by pretrial services can include: jail screening and interviewing of all arrestees; investigation of the arrestee’s ties to the community, past record, potential dangerousness to the community, past history of failures to appear, and the seriousness of the current criminal charges; preparation of a written report to the court and the presiding magistrate, summarizing the defendant’s ties to the community and a recommendation for or against release; case monitoring of conditions of release and court date notification system for defendants; supervised release for selected defendants; social services referrals for defendants; and follow-up services to locate defendants who have failed to appear and return them to the court system without the unnecessary costs of an arrest. (http://pretrialservicesca.org/about)

3) **Risk Assessment Tools:** Risk assessment tools are “empirically based tools that aim to estimate the likelihood of appearance in court with no new arrest, thereby providing information that can support objective and transparent decision-making.” (See S. Desmarais & E. Lowder, *Pretrial Risk Assessment Tools, A Primer for Judges, Prosecutors and Defense Attorneys*, Feb. 2019, p. 3, <http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/02/Pretrial-Risk-Assessment-Primer-February-2019.pdf>). The goal of these pre-trial risk assessments tools is to provide objective, empirical evidence to inform decisions on pretrial release. *(Ibid.)* These tools assign a risk level to individuals based on questions asked to a defendant and/or obtained from the defendant’s criminal history information. Pretrial risk assessment tools are meant to provide judges an additional decision-making tool, not supplant judicial decision making.

Automated risk assessments are becoming increasingly popular with courts around the country. According to the Judicial Council’s Pretrial Detention Reform Workgroup, as of October 2017, 49 of California’s 58 counties use a pretrial risk assessment tool. There are eight different types of risk assessment tools predominantly used among the counties. A few counties use county-specific risk assessment tools. The most commonly-used tools are VPRAI (17 counties), ORAS-Pretrial (17 counties), and COMPAS (4 counties). (See *Pretrial Detention Reform-Recommendations to the Chief Justice*, October 2017, Appendix G at pages 101-102, available at: [https://www.courts.ca.gov/documents/PDRReport-20171023.pdf](https://www.courts.ca.gov/documents/PDRReport-20171023.pdf).)

As stated on the Council of State Governments Justice Center website, “Risk and needs assessments are fundamental to reducing recidivism, but only when they perform as intended. It is imperative that agencies regularly evaluate their implementation of these tools and the predictive accuracy of the results, especially across race and gender groups.” (https://csgjusticecenter.org/partner-with-us/improving-risk-and-needs-assessment-accuracy/)

There has been increased public scrutiny regarding the potential problems with risk assessments. For example, in 2016 ProPublica analyzed the risk assessment software known
as COMPAS and concluded that the tool disproportionately incorrectly labels black defendants as higher risk of committing future crime. (See Machine Bias, J. Angwin, J. Larson, S. Mattu & L Kirchner, May 23, 2016 https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing) Essentially, the concern is that while risk assessments appear to be neutral and unbiased because they are based on mathematical models, the algorithms may have systemic bias built directly into their designs: the algorithms predict future conduct based on historical data, which may reflect historical systemic bias. For example,

Arrest statistics, which are generated by historically biased patterns of criminal law enforcement, provide a prime example of how bias can be intertwined with the data. An excessive police presence in communities of color naturally fosters more contact between those communities and law enforcement. Greater police contact leads to more arrests, creating the impression that heavily policed communities are more prone to crime.

The problem is found not only in what the arrest data measure—crimes stemming from interactions between police and particular communities—but in what the data fail to measure: crimes that are committed by those who reside in communities that are not subjected to police scrutiny. At bottom, data informed by arrests are actually better indicators and predictors of police behavior—where they decide to patrol, who they interact with, and who gets arrested—than they are of the future behavior of individuals facing criminal charges. And, unfortunately, in jurisdictions where arrests play a role in the pretrial process as an indicator of one’s risk to public safety or flight, biased policing patterns and the resultant data will unfairly overstate the risk of those from overpoliced communities. (What Does Fairness Look Like? Conversations on Race, Risk Assessment Tools, and Pretrial Justice, Center on Race, Inequality and the Law at NYU Law and ACLU, October 2018, p. 12-13, available at: http://www.law.nyu.edu/sites/default/files/Final%20Report--ACLU-NYU%20CRIL%20Convening%20on%20Race%20Risk%20Assessment%20%20Fairness.pdf.)

Because many risk assessment tools are proprietary, often we do not know what algorithms they are comprised of, or what weight is given to respective inputs.

The goal of this bill is to minimize disparate results and bias based on race, gender, age, economic circumstances, or disability status. This bill would require pretrial services agencies which use a pretrial risk assessment tool to validate it on a regular basis. This bill would also require that the agency collect, maintain, and publish data regarding individuals assessed by the tool, as well as specified performance measures and outcome measures.

However, this bill does not necessarily address transparency and oversight with regards to the algorithms and data sets that the risk assessment tools use to predict outcomes. The Legislature may want to consider whether algorithmic transparency should also be addressed.
4) Arguments in Support:

a) According to the *Anti-Recidivism Coalition*, a co-sponsor of this bill, “many counties have begun using pretrial risk assessment instruments as an aid in determining the likelihood that an arrestee will commit new offense prior to trial, or miss his or her next court date. By assessing an individual’s risk based on a set of several input factors, these instruments provide judges with additional information in making pretrial release decisions. Currently 49 of California’s 58 counties use one of eight different risk assessment instruments in their pretrial processes.

“However, despite the widespread adoption of these tools, there is currently no statewide requirement regarding the transparency of their inner workings, making them far less accountable to the communities they affect. Moreover, counties are under no obligation to maintain individualized data on the tools’ inputs and outputs, complicating any effort to honestly evaluate them and protect against discriminatory outcomes.

“California needs a strong statewide framework for ensuring the proper use of pretrial risk assessment tools and collecting data associated with their use. For these reasons and others, we are proud to co-sponsor SB 36.”

b) According to the *California Public Defenders Association (CPDA)*, “CPDA has significant concerns about the use of risk assessments instruments in pretrial release decisions, given their potential for perpetuating systemic bias based on race and socio-economic status. For this reason, CPDA supports the intent of this bill to collect data and outcomes from the use of these instruments and to provide transparency in their implementation. It is critically important that we not replace one flawed system of pretrial justice (money-based release) with another (release based on unvalidated and potentially biased algorithms). Given that the use of risk assessment instruments is already on the horizon, the data collection and validation process required by this bill may help determine whether the instruments used are furthering or hindering a more just system of pretrial release.”

5) Related Legislation: SB 141 (Bates), would require the Board of Parole Hearings to consider the results of a comprehensive validated risk assessment for sex offenders in considering parole of an inmate with a prior conviction for a sexually violent offense. SB 141 will be heard in this committee today.

6) Prior Legislation:

a) SB 10 (Hertzberg), Chapter 244, Statutes of 2018, creates a risk-based non-monetary prearraignment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person’s determined to be too high a risk to assure public safety if released.

b) SB 1198 (Wilk), of the 2017-2018 Legislative Session, would have required the State- Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee to sponsor research on related to recidivism and cessation from offending, as specified. SB 1198 was held in the Assembly Appropriations Committee.
c) AB 789 (Rubio), Chapter 554, Statutes of 2017, allows a court to approve, without a
hearing, own recognizance (OR) release under a court-operated or court-approved pretrial
release program for arrestees of specified felony offenses with three or more prior
failures to appear.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-Recidivism Coalition (Co-Sponsor)
Californians for Safety and Justice (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
NextGen California (Co-Sponsor)
Service Employees International Union (Co-Sponsor)
Western Center on Law & Poverty, Inc. (Co-Sponsor)
Bay Area Regional Health Inequities Initiative
California Faculty Association
California Public Defenders Association
Center on Juvenile and Criminal Justice
Disability Rights California
League of Women Voters of California
Media Alliance
Showing Up for Racial Justice Bay Area

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744
Date of Hearing: June 11, 2019
Counsel: Matthew Fleming

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

SB 141 (Bates) – As Amended April 11, 2019

SUMMARY: Requires the Board of Parole Hearings (BPH) to consider the results of a comprehensive validated risk assessment for sex offenders when considering parole of an inmate who has a prior conviction for a sexually violent offense, as specified.

EXISTING LAW:

1) Defines a “sexually violent predator” as a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. (Welf. & Inst. Code, § 6600, subd. (a).)

2) Defines “sexually violent offense” to include the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity: rape, spousal rape, aiding and abetting rape, aggravated sexual assault of a child, sodomy, oral copulation, lewd and lascivious acts involving children, continuous sexual abuse of a child, or penetration with a foreign object, or certain felony kidnapping and assault offenses that are committed with the intent to commit a sexual assault, as specified. (Welf. & Inst. Code, § 6600, subd. (b).)

3) States that whenever the Secretary of the California Department of Corrections and Rehabilitation (CDCR) determines that when a person who is in custody of CDCR, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator (SVP), the Secretary shall, at least six months prior to that individual’s scheduled date for release from prison, refer the person for evaluation by the Department of State Hospitals (DSH) to determine if the person qualifies as an SVP. (Welf. & Inst. Code, § 6601, subd. (a)(1).)

4) Provides that if the inmate was received by the CDCR with less than nine months of his or her sentence to serve, or if the inmate’s release date is modified by judicial or administrative action, the secretary may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate’s scheduled release date. (Welf. & Inst. Code, § 6601, subd. (a)(1).)

5) Provides that an SVP petition may be filed if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual’s custody was unlawful, if the unlawful custody was the
result of a good faith mistake of fact or law. (Welf. & Inst. Code, § 6601, subd. (a)(2)).

6) Specifies that an offender who has been referred for SVP evaluation shall be screened by the
CDCR and the BPH based on whether the person has committed a sexually violent predatory
offense and on a review of the person’s social, criminal, and institutional history. This
screening shall be conducted in accordance with a structured screening instrument developed
and updated by the DSH in consultation with the CDCR. If as a result of this screening it is
determined that the person is likely to be a SVP, the CDCR shall refer the person to the DSH
for a full evaluation. (Welf. & Inst. Code, § 6601, subd. (b)).

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author’s Statement: According to the author, "SB 141 creates parity in our laws by
requiring that all inmates convicted of a sexually violent offense are administered a risk
assessment that specially tests for the inmate’s likelihood to engage in sexually violent
behavior before their parole hearing.

“Specifically, this bill requires the Parole Board to consider the results of a ‘comprehensive
validated risk assessment for sex offenders’ for inmates that have a prior conviction for a
sexually violent offense, as defined in California Welfare & Institutions Code 6600(b).

“As the Legislature continues to expand the possibility of early release of inmates sentenced
to life terms, SB 141 provides additional assurance that the people we are releasing into our
communities do not pose a risk to the health and safety of others.”

2) Sexually Violent Predator Act: The Sexually Violent Predator Act (SVPA) establishes an
extended civil commitment scheme for sex offenders who are about to be released from
prison, but are referred to the DSH for treatment in a state hospital, because they have
suffered from a mental illness which causes them to be a danger to the safety of others.

The Department of State Hospitals (DSH) uses specified criteria to determine whether an
individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a
SVP if: (1) the defendant has committed specified sex offenses against two or more victims;
(2) the defendant has a diagnosable mental disorder that makes the person a danger to the
health and safety of others in that it is likely that he or she will engage in sexually-violent
criminal behavior; and, (3) two licensed psychiatrists or psychologists concur in the
diagnosis. If both clinical evaluators find that the person meets the criteria, the case is
referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause
if found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a
reasonable doubt that the offender meets the statutory criteria. The state must prove "[1] a
person who has been convicted of a sexually violent offense against [at least one] victim[]
and [2] who has a diagnosed mental disorder that [3] makes the person a danger to the health
and safety of others in that it is likely that he or she will engage in [predatory] sexually
violent criminal behavior." (Cooley v. Superior Court (Martinez) (2002) 29 Cal.4th 228,
246.) If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The DSH must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 ("Jessica's Law"), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See People v. McKee (2010) 47 Cal.4th 1172, 1185-87.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and, more recently, equal protection challenges. (See People v. McKee, supra, 47 Cal.4th 1172 and People v. McKee (2012) 207 Cal.App.4th 1325.)

3) **Determinate v. Indeterminate Sentencing as Applied to SVPs:** California has several sentencing schemes. Most felonies are punished under the determinate sentencing scheme. Under the determinate sentencing scheme, a court sentences a defendant to a fixed term in custody. If imposing a sentence for more than one offense, the court must select one term as the principal term, and when concurrent sentencing is an option, must decide whether to sentence concurrently or consecutively. At the conclusion of the determinate sentence, an offender is released on parole or post-release community supervision.

Indeterminate sentences are imprisonment for “life” or for a term of “years to life.” These sentences are not fixed by the court and the length of imprisonment will vary from defendant to defendant. The Board of Parole Hearings (BPH) is the parole authority that sets the parole dates for prisoners serving life sentences.

The SVPA, as originally envisioned, applied to determinate prison terms because the offenders had a determined date for release. It was presumed that the law need not apply to indeterminate sentences because a person with a sexually violent offense, who is still a danger to the community because they have a mental condition that cannot be controlled without further custodial supervision or forced medical treatment would not be granted parole by the BPH. This bill would clarify that prior to paroling out a person with a sexually violent conviction it must consider the results of a comprehensive validated risk assessment, as defined by the Welfare and Institutions Code.

4) **Argument in Support:** According to the bill’s sponsor, the San Diego District Attorney: “In 1975, Porter was arrested for sodomy and kidnapping. Criminal proceedings were suspended, and he was treated as a Mentally Disordered Sex Offender at Patton Hospital from 1976 - 1977. He was discharged. In 1989, Porter was convicted again, this time for murder and rape with a foreign object. He has been diagnosed with Sexual Sadism and has been convicted for a sexually violent offense that otherwise qualifies for an SVP commitment. Unfortunately, under the current law, since Porter was sentenced to an “indeterminate” term he will not be screened, he will receive no further treatment for his
sexually violent criminal predatory behavior, and he could very well meet the Board of Parole Hearings’ (BPH) standard to be released.

“SB 141, as amended on April 11, 2019, will require the parole board to consider a state authorized risk assessment tool used for evaluating sex offenders for lifers who have a prior conviction for a sexually violent offense. In other words, if a defendant who has been convicted of a sexually violent offense in his past, who is serving an indeterminate term, and who is seeking to be released on parole, will now be given a validated sex offender risk assessment (like the Static-99). The bill requires BPH to consider the results of a validated sex offender risk assessment to measure the defendant’s likelihood to commit another sexual offense when deciding whether the defendant is no longer a danger and should be granted parole.”

5) Related Legislation: AB 303 (Cervantes) would establish procedures for requesting and granting continuances in Sexually Violent Predator (SVP) proceedings, as specified. AB 303 is pending hearing in the Senate Public Safety Committee.

6) Prior Legislation:

a) AB 2661 (Arambula), Chapter 821, Statutes of 2018, clarified that a person’s subsequent conviction for an offense that is not a sexually violent offense committed while in the custody of the California Department of Corrections and Rehabilitation (CDCR) or the Department of State Hospitals (DSH) while awaiting the resolution of a petition to have the person committed to the DSH as SVP does not change the jurisdiction over the pending SVP petition.

b) AB 255 (Gallagher), Chapter 39, Statutes of 2017, specified that courts must consider the connections to the community when designating the placement of a SVP in a county for conditional release.

c) AB 262 (Lackey), of the 2015-16 Legislative Session, would have placed additional residency restrictions on SVP’s conditionally released for community outpatient treatment by requiring that an SVP shall only reside in a dwelling or abode within 10 miles of a permanent physical police or sheriff station that has jurisdiction over the location and has 24 hour a day peace officer staffing on duty and available to respond to call for service. AB 262 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Correctional Supervisors Organization
California District Attorneys Association
California Narcotic Officers’ Association
California Police Chiefs Association
California State Sheriffs’ Association
Change for Justice
Crime Victims Action Alliance
Crime Victims United of California
Los Angeles Professional Peace Officers Association
Peace Officers Research Association of California
Riverside Sheriffs' Association
San Diego County District Attorney's Office

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
Date of Hearing: June 11, 2019
Counsel: Matthew Fleming

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

SB 164 (McGuire) – As Amended June 4, 2019

SUMMARY: States that a person convicted of an infraction, who has demonstrated that payment of a fine would pose a hardship and has therefore elected to perform community service in lieu of paying the fine, may perform that community service in the county in which the infraction occurred, the county of the person’s residence, or any other county to which the person has substantial ties, including employment, family, or education.

EXISTING LAW:

1) States that crimes and public offenses are felonies, misdemeanors, and infractions. (Pen. Code, § 16.)

2) States that various public offenses are infractions and punishes those infractions by a maximum $250 fine unless a different punishment is specified. (Pen. Code § 19.8, subds. (a) and (b).)

3) States that an infraction is not punishable by imprisonment and that a person charged with an infraction shall not be entitled to a trial by jury or entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released. (Pen. Code § 19.6.)

4) States that the court must permit a person convicted of an infraction to perform community service in lieu of a fine, upon showing that payment of the total fine would pose a hardship on the defendant or the defendant’s family. (Pen. Code, § 1209.5, subd. (a).)

5) States that the applicable community service hourly rate is double the minimum wage set for the applicable calendar year, based on the schedule for an employer who employs 25 or fewer employees as specified. (Pen. Code, § 1209.5, subd. (c)(1).)

6) States that a court may by local rule increase the amount that is credited for each hour of community service performed to exceed the hourly rate (Pen. Code, § 1209.5, subd. (c)(2).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author’s Statement: According to the author, “SB 164 offers a workable alternative for individuals who qualify for and would like to satisfy their financial obligations through community service.
“The bill will allow individuals who qualify for community service—per Judge’s order—to perform that service in their home county, the county where they received the violation, or any other county in which the individual has substantial ties, such as employment, family, or education.

“SB 164 will encourage more Californians to complete their community service hours, and, more importantly, will strengthen bonds of community pride that come from donating time and energy in one’s own community or home county.”

2) **Infraction Offenses in California:** Although infraction offenses are established in the Penal Code, they are substantially less serious than a felony or a misdemeanor. Infraction offenses do not subject a person to imprisonment or probation. Under Penal Code Section 16, an infraction is arguably not a “crime” but merely a “public offense.” The most common infractions are traffic tickets, such as speeding or making an unsafe lane change. Other offenses, such as “disturbing the peace” – Penal Code Section 415 – can be charged as either an infraction or a misdemeanor.

Instead of being punished by incarceration or probation, persons who have committed infraction offenses are normally required to pay a fine. In some cases, where a person demonstrates an inability to pay a fine, the court may allow community service to be performed instead. In such cases, the court will often provide a list of organizations with whom the community service may completed in order to satisfy the community service obligation.

3) **The Need for this Bill:** This bill would allow a person more flexibility in terms of where they can complete community service that is performed in lieu of paying a fine on an infraction offense. Specifically, this bill would allow the person the choice of completing his or her community service in the county where the infraction occurred, the county of his or her residence, or any other county to which the person has significant ties, including but not limited to work, family, or school. Considering that a person who is performing community service instead of paying a fine has been determined by the court to be suffering from financial hardship, it is sensible to allow that person the option of completing community service in a convenient location. To the extent that courts are requiring violators to complete community service in the county where the infraction occurred, this bill would provide a solution by alleviating the additional financial burden on persons who live in a different county and must pay for travel in order to complete the community service obligation.

4) **Argument in Support:** According to *Legal Services for Prisoners with Children*:

“California has some of the highest costs for traffic fines and fees in the country, due to the large number of add-on fees. For example, a ticket that was originally $100 automatically becomes $490, due to the person’s inability to pay. This is an excessive cost that low-income and middle-income families are unable to pay or have a hard time paying.

“Currently law allows judges to provide alternatives payment options for individuals who would face financial hardship in paying the mandated traffic fees. Options may include paying in installments or completing community service hours in lieu of the total fine. The community service alternative is an incredible opportunity for both nonprofit service providers to benefit from the hours donated to their activities as well as for the individuals to
give back to the community. This alternative becomes an unworkable option when the services must be performed in a jurisdiction far from where the person lives.

"In order to help disadvantaged communities fulfill financial obligations to the court, expansion of the community service option is needed. SB 164 allows individuals to perform community service in the county where they live in addition to the county where the violation occurs. The end result of these options is the improvement of the chance that a person will successfully complete their community service."

5) **Prior Legislation:**

a) SB 1233 (McGuire), of the 2017-2018 Legislative Session would have authorized a person convicted of an infraction, a misdemeanor for failure to appear or pay bail for specified violations, or who has suffered a civil assessment for failure to appear, to perform community service in the defendant’s county of residence in lieu of part or all of the fine or assessment imposed by participating in specified educational programs. SB 1233 died in the Senate Appropriations Committee.

b) SB 185 (McGuire) of the 2017-2018 Legislative Session would have required a court to determine a defendant’s ability to pay traffic violations and make specified accommodations if it determined the defendant to be indigent. SB 185 died in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California  
American Federation of State, County and Municipal Employees, AFL-CIO  
California Attorneys for Criminal Justice  
California Catholic Conference  
California Public Defenders Association  
Community Housing Partnership  
Courage Campaign  
Disability Rights California  
Friends Committee on Legislation of California  
Further the Work  
Legal Services for Prisoners with Children  
LSS of Northern California  
Riverside Temple Beth El

**Opposition**

None

**Analysis Prepared by:** Matthew Fleming / PUB. S. / (916) 319-3744
Date of Hearing: June 11, 2019
Counsel: Lorraine Black

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

SB 192 (Hertzberg) – As Introduced January 30, 2019

SUMMARY: Repeals the *posse comitatus* provision of the Penal Code, which makes an able-bodied person 18 years of age or older who neglects or refuses to assist a peace officer or a judge in making an arrest, retaking an escaped person into custody, or preventing the breach of the peace, subject to a fine between $50-$1000.

EXISTING LAW:

1) States that every able-bodied person above 18 years of age who neglects or refuses to join the *posse comitatus* or power of the county is punishable by a fine ranging from $50 to $1000. (Pen. Code, § 150.)

2) States that neglecting or refusing to join the *posse comitatus* includes neglecting or refusing to aid and assist peace officers in taking or arresting a person whom there may be issued any process, or retaking a person who after being arrested or confined may have escaped from arrest or imprisonment, or preventing any breach of the peace, or the commission of any criminal offense. (Pen. Code, § 150.)

3) States that every peace officer or other person empowered to make the arrest shall have the authority to command assistance. (Pen. Code, § 1550.)

4) States that failure or refusal to aid a peace officer is a crime. (Pen. Code, § 1550.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "In California, citizens who refuse to join a posse can be held criminally liable for a misdemeanor, for which they can be fined up to $1,000. This 'posse comitatus' law is a vestige of a bygone era, and when invoked, subjects out citizens to an untenable moral dilemma: join and potentially put one's life at risk, or refuse and become a criminal. SB 192 does away with this unnecessary penalty and helps bring California law into the 21st century."

2) **Posse comitatus overview:** *Posse comitatus* refers to the ability of law enforcement to recruit "able-bodied person[s] 18 years of age or older" to make arrests, recapture a suspect that escaped custody, or help keep the peace. Under the California Posse Comitatus Act, it is unlawful to refuse to comply with a request from law enforcement to join a posse. The California Posse Comitatus Act was passed in 1872, when California was still a territory. (See Sheeler, *It's a crime to refuse to help the police in California. This bill could change
Only 12 states have specified punishments for violating *posse comitatus* statutes. 38 states have either no punishment specified or unclear statutory language. The punishments range from civil violations (ex. Maine) to up to one year imprisonment (ex. Florida). Connecticut and Maryland do not have *posse comitatus* provisions; Connecticut repealed their *posse comitatus* provision in 2000. (See Kopel, *The Posse Comitatus and the Office of Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement*, https://scholarlycommons.law.northwestern.edu/jcle/vol104/iss4/3/).

According the author, “This measure does not seek to address a deficiency in law, but rather seeks to remove an outdated and irrelevant crime from the California Penal Code.”

3) **Argument in Support:** According to the *Ella Baker Center for Human Rights*, “We support any opportunity to strike from California code arcane felonies and misdemeanors that serve no purpose. California’s ‘posse comitatus’ law — enacted in 1872 — is a vestige of a bygone era.”

4) **Argument in Opposition:** According to the *California State Sheriff’s Association*, “We are unfamiliar with concerns with this statute other than it was enacted many years ago and carries a fine for a person who disobeys it. There are situations in which a peace officer might look to private persons for assistance in matters of emergency or risks to public safety and we are unconvincing that this statute should be repealed.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Attorneys for Criminal Justice  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Homeboy Industries  
Lawyers Committee for Civil Rights of the San Francisco Bay Area

**Opposition**

California State Sheriffs’ Association

**Analysis Prepared by:** Lorraine Black / PUB. S. / (916) 319-3744
SUMMARY: Enhances the security requirements placed on the premises where a licensed firearms dealer conducts his or her business. Specifically, this bill:

1) Provides that anytime a firearm licensee is not open for business, each particular firearm shall be stored in secure facility by one of the following methods, except as specified:

   a) Secured with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises;

   b) Stored in a locked fireproof safe or vault that meet the minimum safety standards developed by the Attorney General (AG) for gun safes, as specified;

   c) Stored in a firearms display case that is fitted with smash-proof polycarbonate panels that are at least one-quarter inch thick made with a steel frame that is no thinner than 12 gauge, and is fitted with a hardened steel lock where the case opens to access the firearm;

   d) Stored in a windowless room equipped with a steel security door fitted with a deadbolt lock, and that does not have a door exposed to the outside of the building; or

   e) Stored behind a steel roll-down door or security gate, or in a locked steel gun rack by use of a hardened steel bar.

2) Requires a licensed firearms dealer, if the licensee's location is at street level, and firearms are secured by means of a hardened steel rod or cable, to install, or cause to be installed, concrete or hardened steel bollards, or other barriers, such as security planters or other devices with a similar structural integrity of bollards, to protect the location's front entrance, any floor to ceiling windows, and any other doors that can be breached by a vehicle. The bollards shall meet the following requirements:

   a) Be no less than four inches in diameter and 36 inches in height from the ground;

   b) Be spaced so as not to obstruct access so as not to obstruct accessible routes or accessible means of egress in compliance with the Americans with Disabilities Act; and,
c) Be capable of stopping a 5,000-pound vehicle travelling at 30 miles per hour, in compliance with specified testing standards.

3) Provides that the above provisions related to security barriers shall not apply to elevated loading docks, or to a licensee that is unable to comply due to local ordinances, covenants, lease conditions, or similar conditions not under the control of the licensee.

4) States that bollards installed prior to September 1, 2017, shall be considered compliant if they are composed of concrete or hardened steel and do not obstruct accessible routes or accessible means of egress in compliance with the Americans with Disabilities Act, and have clear width of not less than 36 inches but no more than 60 inches.

5) Provides that unless a licensee complies with the above interior and exterior security requirements, the licensee shall install locking steel roll-down doors on any perimeter doors and floor to ceiling windows. Emergency exits are exempt from the requirement where installation would be in violation of state or local fire code.

6) Delays implementation of the above firearm licensee security requirement until July 1, 2020.

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 that a licensed firearms dealer 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) Allows a licensed firearms dealer to 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 a licensed firearms dealer 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) Authorizes a licensed firearms dealer to deliver a firearm to a 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 exemptions; 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 that a licensed firearms dealer conducting a firearms business shall publicly display that person's license issued, or a facsimile thereof, at any gun show or event, as specified.
   (Pen. Code § 26805, subd. (b)(2).)

7) Requires that any time when the licensee is not open for business, all inventory firearms must be stored in the licensed location. All firearms must be secured using one of the following methods as to each particular firearm:

   a) Store the firearm in a secure facility that is a part of, or that constitutes, the licensees business premises;

   b) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises; or,

   c) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.
   (Pen. Code, § 26890, subd. (a).)

8) States that the licensing authority in an unincorporated area of a county or within a city may impose security requirements that are more strict or are at a higher standard than those that are required under state law. (Pen. Code, §26890, subd. (b).)

9) Provides that upon written request from a licensee, the licensing authority may grant an exemption from compliance with storage requirements if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee. (Pen. Code, § 26890, subd. (c).)

10) States that specified storage requirements do not apply to a licensee organized as a nonprofit public benefit corporation, if both of the following conditions are satisfied:

   a) The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation; and

   b) The firearms are not handguns. (Pen. Code, § 26890, subd. (d).)

11) Requires all licensed firearms dealers to store in a secure facility all firearms manufactured and all barrels for firearms manufactured. (Pen. Code, § 29140.)
12) Defines a "secure facility" to mean that the facility satisfies all of the following:

a) The facility is equipped with a burglar alarm with central monitoring;

b) All perimeter entries to areas in which firearms are stored other than doors, including windows and skylights, are secured with steel window guards or an audible, silent, or sonic alarm to detect entry; and,

c) All perimeter doorways are designed in one of the following ways:

i. A windowless steel security door equipped with both a deadbolt and a doorknob lock;

ii. A windowed metal door equipped with both a deadbolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window is covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door;

iii. A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe;

iv. Hinges and hasps installed so that they cannot be removed when the doors are closed and locked;

v. Heating, ventilating, air conditioning, and service openings are secured with steel bars, metal grating, or an alarm system;

vi. No perimeter metal grates are capable of being entered by any person;

vii. Steel bars used to satisfy security requirements are not capable of being entered by any person;

viii. Perimeter walls of rooms in which firearms are stored are constructed of concrete or at least 10-gauge expanded steel wire mesh utilized along with typical wood frame and drywall construction. If firearms are not stored in a vault, the facility shall use an exterior security-type door along with a high security, single-key deadbolt, or other door that is more secure. All firearms shall be stored in a separate room away from any general living area or work area. Any door to the storage facility shall be locked while unattended;

ix. Perimeter doorways, including the loading dock area, are locked at all times when not attended by paid employees or contracted employees, including security guards; and,

x. Except when a firearm is currently being tested, any ammunition on the premises is removed from all manufactured guns and stored in a separate and locked room, cabinet, or box away from the storage area for the firearms. Ammunition may be stored with a weapon only in a locked safe. (Pen. Code, § 29141.)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Authors Statement:** According to the author, “Guns are stolen from gun stores due to a lack of adequate security. In some cases, guns are left in their display cases without suitable locking mechanisms, making them easy targets for burglars.

In a series of robberies during 2016, hundreds of guns were stolen from guns stores in the cities of San Carlos, Folsom, Sunnyvale, Ceres, Petaluma, Ventura, Elk Grove, Rocklin, Grass Valley, and El Cerrito. In most of the burglaries, thieves used a vehicle as a battering ram to break into the gun store. Several of the stores left the guns in their glass display cases, making them easily accessible to the robbers. Similar smash and grab firearm thefts have occurred more recently in Loomis, Fairfield, Stockton, and Dixon.

Across the nation, ATF data shows that gun story robberies are becoming an increasing occurrence. Burglaries of gun stores have increased by over 70 percent since 2013. The number of firearms stolen during burglaries has also increased by over 130%, from 3,355 in 2013 to 7,841 in 2017.

SB 220 implements best practices for storing guns when a gun store is closed for business. The bill strengthen gun dealer security standards, but also takes into consideration the impact on these businesses by providing several options for compliance.

2) **Governor's Veto:** This bill is identical to SB 464 (Hill) of the 2017-18 Legislative Session which was vetoed by the Governor. In his veto message, Governor Brown stated, “This bill would require additional security enhancements on the premises of all licensed firearms dealers in California.

“State law already requires that firearms dealers enact security measures to avoid theft. Local jurisdictions can-and have- gone further by adding additional specific requirements. I believe local authorities are in the best position to determine what, of any additional measures are needed in their jurisdiction.”

3) **Firearms Dealers Thefts:** There have been a number of firearms stolen from gun stores throughout California—many of these thefts are perpetrated by the offender driving a car through the front window of a firearm retailer to gain access to the store. For example:

When five juveniles used an SUV as a battering ram to slam through the front window and metal security gate of the Rocklin Armory gun shop on an early July morning, Walter Ford’s ultra-high-definition security cameras captured the entire incident in near perfect clarity.

The burglars stream into the store and begin searching for the cache of weapons they expect to find. One disappears from view, then reappears carrying a rifle and runs out of the store. The other four, though, can’t find any weapons to steal. They quickly check the shelves, find nothing and run back through the smashed entrance. The entire incident takes less than two minutes.

The brazen burglary was one of five Sacramento-area gun store thefts in less than
three months this year. In all, more than 200 guns were stolen, but only one came from the Rocklin Armory.

That’s because Ford, one of the store’s two owners, takes precautions. Guns are high-value items, especially to criminals, and Ford knows he’s a target. Each night before closing, Ford locks up every gun in a safe. The one rifle he lost was left out because it was being worked on for a customer. But not every gun store takes those steps. Just two months earlier, a nearby gun store lost more than 100 guns in a single burglary. None of it was captured by surveillance cameras.

“I’m a responsible gun owner,” Ford said. “My guns at home, even though I live alone with no kids, they’re locked up. The ammo’s kept separate. There’s no reason I shouldn’t do the same here.”

The next morning, the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives was on the case. Graham Barlow, ATF special agent in charge of the agency’s Sacramento field office, said gun shops are increasingly becoming targets of criminals. For some gangs, gun theft has even become a specialty.

“They have a very unique way of doing it,” Barlow said. “That’s their business. Gun stores.”

The number of guns stolen from gun shops in California nearly doubled between 2013 and 2015. Last year, more than 400 guns were reported stolen from California gun stores, according to ATF data. And those are just a fraction of all guns stolen in California.

According to data from the California Department of Justice Bureau of Firearms, more than 70,000 guns were reported lost or stolen by gun owners in the past five years. A joint investigation by NBC stations across California found at least 4,000 of those lost or stolen guns were later seized by police in connection to crimes.

The national numbers are even more troubling. In the past 10 years, more than 2 million guns have been reported stolen in the United States, according to data from the Federal Bureau of Investigation.¹

4) Argument in Support: According to California Brady United Against Gun Violence, “California’s strong gun laws are helping to keep firearms out of dangerous hands and are saving lives. Our state’s firearm mortality rate has decreased 55% since the high in 1993 – almost four times the decrease in the rest of the nation. Illegal guns, however, continue to be a big problem that threatens public safety. Many illegal guns originate as stolen guns, which fuel the black market and are often used in crime. Firearms stolen in bulk from licensed firearm dealers (FFLs) exacerbates this problem and, unfortunately, is happening more frequently. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 9,281 firearms were reported stolen by FFLs in 2016. Of these, 7,488 were stolen during

burglaries, whereby there was an unlawful entry to commit a theft. In California alone, 479 firearms were stolen during FFL burglaries in 2016. It is alarming that the number of firearms stolen this way has increased 72.53% since 2012. Moreover, media reports show that in a series of recent FFL burglaries in California, the thieves used vehicles to ram and smash into the gun stores. This so-called “crash and grab” needs to be prevented.

"Senate Bill 220 will help prevent “crash and grab” and other FFL burglaries by expanding the requirements for securely storing firearms when the FFL is not open for business. Under existing law, all inventory firearms must be stored in the licensed location when the FFL is closed. Existing law requires only one of three security options, which has proven to be insufficient. SB 220 tightens security measures by requiring that that the licensed location be a secure facility with steel bars on the windows, deadbolts or a metal grate on doors, and steel bars, metal grating, or an alarm system to protect A/C vents. SB 220 also require FFLs to choose one of the eight additional security measures listed in the bill. These new requirements will help prevent entry in the first place, or prevent the theft of guns if entry is gained.

"SB 220 provides a range of workable options and the enhanced security measures in the bill impose one-time costs on FFLs that will provide clear public safety benefits. The requirements in SB 220 are best practices that will prevent the theft of firearms from FFLs, many of which have big inventories of guns. Every manufactured gun starts out as a legal gun; once stolen, it becomes an illegal gun in the hands of a criminal. These stolen guns are often sold to other criminals or people who cannot pass a background check, which jeopardizes public safety. Preventing gun theft from FFLs furthers Brady California’s core goal of reducing firearm injury and death by keeping firearms out of dangerous hands.”

5) **Argument in Opposition:** According to the *California Rifle and Pistol Association*, "Although California already must store and secure firearms, SB 220 would increase the storage and security requirements of all firearms in the inventory of a licensed firearms dealer.

"The CRPA does support making California communities safer and keeping firearms out of the hands of criminals. Unfortunately, this legislation will not accomplish that goal. Instead it is a knee jerk reaction to recent criminal activity involving a very small percentage of businesses. The long list of exemptions will only create confusion and a regulatory nightmare to enforce. Costs and red tape will make compliance by California’s small businesses impossible.

"California law already requires each firearm to be secured by storing the firearm in a secure facility that is a part of, or that constitutes, the firearms dealer’s business premises, and securing the firearm with a steel rod or cable with specified features, or storing the firearm in a locked fireproof safe or vault in the business premises.

"If the firearm dealer’s location is at street level, SB 220 would also require the business to install concrete or hardened steel bollards or other barriers capable of stopping a 5,000-pound vehicle traveling at 30 miles per hour to protect the location’s front entrance, any floor-to-ceiling windows, and any other doors, that could be breached by the vehicle.

"California already places severe security requirements on our firearms dealers, including
storing their inventory in a “secure facility” which, as defined, includes numerous security precautions – all of which must be satisfied. SB 220 would impose unnecessary additional security requirements costing tens of thousands of dollars on most firearms dealers. Although some larger firearms dealers may be able to absorb these costs, SB 220 would have a devastating financial impact on most smaller dealers, driving many of them out of business – with the greatest impact felt in rural areas."

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Student Activists
Brady California United Against Gun Violence
Giffords Law Center to Prevent Gun Violence
Youth ALIVE!

Oppose

Cal-Ore Wetlands and Waterfowl Council
California Bowmen Hunters/State Archery Association
California Chapter Wild Sheep Foundation
California Deer Association
California Houndsmen for Conservation
California Rifle and Pistol Association, Inc.
California Sportsman's Lobby, Inc.
California State Chapter - National Wild Turkey Federation
California Waterfowl Association
Congressional Sportsmen's Foundation
Crossroads of the West Gun Shows
National Rifle Association
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Rocky Mountain Elk Foundation
Safari Club International - California Chapters
San Diego County Wildlife Federation
San Francisco Bay Area Chapter - Safari Club International
The Black Brant Group
Tulare Basin Wetlands Association

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744
SUMMARY: Makes the theft of agricultural equipment in excess of $950 grand theft punishable as an alternate felony misdemeanor, and requires the proceeds of the fine imposed following a conviction of the new provision to be allocated to the Central Valley Rural Crime Prevention Program or the Central Coast Rural Crime Prevention Program. Specifically, this bill:

1) Provides that a person that steals, takes, or carries away tractors, all-terrain vehicles or other agricultural equipment, or any portion thereof, used in the acquisition or production of food for public consumption, which are of a value exceeding $950 is guilty of grand theft.

2) States that in a county participating in a rural crime prevention program, the proceeds of any fine imposed for conviction of stealing agricultural equipment shall be allocated to the Central Valley Rural Crime Prevention Program or the Central Coast Rural Crime Prevention Program.

EXISTING LAW:

1) Defines "grand theft" as any theft where the money, labor, or real or personal property taken is in excess of $950, except as specified. (Pen. Code, § 487, subd. (a).)

2) Provides that notwithstanding the value of the property taken, grand theft is committed in any of the following cases: (Penal Code Section 487(b)):

   a) When domestic fowls, avocados, or other farm crops are taken of a value exceeding $250;

   b) When fish or other aquacultural products are taken from a commercial or research operation that is producing that product of a value exceeding $250;

   c) Where money, labor or property is taken by a servant or employee from his or her principal and aggregates $950 or more in any consecutive 12-month period; and,

   d) When the property is taken from the person of another; or, when the property taken is, among other things, an automobile, horse, or firearm. (Pen. Code § 487, subd. (b).)

3) Provides that if the grand theft involves the theft of a firearm, it is punishable by imprisonment in state prison for 16 months, two years or three years. In all other cases, grand theft is punishable by imprisonment in county jail for not more than one year, or by
imprisonment in county jail for 16 months, two years or three years. (Penal Code Section 489.)

4) Provides that theft in other cases is petty theft. (Pen. Code, § 488.)

5) Provides that upon conviction for any crime punishable by imprisonment in any jail or prison, to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding $1,000 in cases of misdemeanors, or $10,000 in case of felonies, in addition to the imprisonment prescribed. (Pen. Code, § 672.)

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

7) States that the Counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo may develop and implement a Central Coast Rural Crime Prevention Program which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office for the purpose of preventing rural crime. (Pen. Code, § 14181, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Authors Statement:** According to the author, “SB 224 will help law enforcement agencies combat agriculture theft. The bill will create a new section in the Penal Code for theft of agricultural property, which will identify the theft of agriculture equipment, or property including tractors and all-terrain vehicles, as a separate crime. SB 224 will also provide that all fines collected as a result of criminal prosecution of this crime be recirculated back to current agriculture and rural based crime prevention programs. By making agricultural grand theft a separate crime, this would allow law enforcement agencies and law makers to better track this crime all the way through prosecution.

“California first authorized the Central Valley Rural Crimes Prevention Program (Penal Code § 14170) in Tulare County in 1995. It was expanded in 1999 to include Fresno, Kern, Kings, Madera, Merced San Joaquin and Stanislaus counties.

“This program, along with the Central Coast Rural Crime Prevention Program which was established in 2003 (Penal Code § 14180) and includes the counties of Monterey, San Benito, Santa Barbara, Santa Cruz, and San Luis Obispo provides participating law enforcement agencies with partners and resources to combat agriculture and rural based crimes. They also allow local law enforcement agencies to effectively combine their efforts in developing crime prevention, problem solving, and crime control techniques, while also encouraging timely reporting and evaluation of these crimes over a larger geographic area.

“Theft of agriculture equipment not only affects the ability of farmers and agriculture business owners to make a living, it also paralyzes their production of commercial goods in
the form of food, textile materials and water. Through the work of local law enforcement, loss recovery has increased but we need to stop the crime before it happens.

“SB 224 would establish theft of agriculture equipment or property including tractors and all-terrain vehicles, as a separate crime. This bill will also recirculate money from fines collected back into existing rural and agriculture theft crime fighting programs that help provide more resources to law enforcements efforts.

2) **Argument in Support:** According to the *Santa Barbara County District Attorney’s Office,*

This bill will help support local law enforcement’s efforts in combatting agriculture theft by making grand theft of agriculture equipment a separate crime and recirculating the fees collected from the criminal prosecution of this crime back into current rural crime prevention programs.

“These programs, which include the Central Valley Rural Crimes Prevention Program and the Central Coast Rural Crime Prevention Program, provide participating law enforcement agencies with partners and resources to combat agriculture and rural based crimes. They also allow local law enforcement agencies to effectively combine their efforts in developing crime prevention, problem solving, and crime control techniques, while also encouraging timely reporting and evaluation of these crimes over a larger geographic area.

“Every year, California farmers and ranchers endure millions of dollars in losses due to theft of vital agriculture equipment severely impacting production lines. SB 224 allows local law enforcement to better track and ascertain the impact of their rural and agricultural crime prevention programs and resources used to operate them.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Almond Alliance of California  
Almond Hullers and Processors Association  
Associated Builders and Contractors - Central California Chapter  
Bakersfield Association of Realtors  
California Cattlemen’s Association  
California Chamber of Commerce  
California Farm Bureau Federation  
California Peace Officers Association  
California State Sheriffs’ Association  
Fresno Chamber of Commerce  
Fresno County Farm Bureau  
Greater Bakersfield Chamber of Commerce  
Homebuilders Association of Kern County  
Kern County Farm Bureau  
Kern Hispanic Chamber of Commerce  
Kern Taxpayers Association  
Office of the Sheriff, Santa Barbara County
Santa Barbara County Board of Supervisors
Santa Barbara County District Attorney's Office
Tulare Chamber of Commerce
Tulare County District Attorney's Office
Tulare County Farm Bureau

**Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744
Date of Hearing: June 11, 2019  
Counsel: Matthew Fleming

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

SB 233 (Wiener) – As Amended April 23, 2019

As Proposed to be Amended in Committee

SUMMARY: Makes condoms inadmissible as evidence in specified crimes relating to prostitution and prohibits the arrest of a person for misdemeanor drug possession or prostitution-related offenses when the person is reporting certain, more serious crimes. Specifically, this bill:

1) States that the possession of a condom is not admissible as evidence in the prosecution of a violation of specified offenses related to prostitution.

2) States that a person who is reports being a victim of, or a witness to a serious felony, as specified, assault as specified, domestic violence, as specified, extortion, as specified, human trafficking, as specified, sexual battery, as specified, or stalking, as specified, shall not be arrested for the following offenses if they were engaged in such an offense at or around the time that they were a victim of, or witness to the crime they are reporting:

   a) A misdemeanor controlled substances offense, as specified; or

   b) A prostitution-related offense, as specified.

3) States that the possession of condoms in any amount shall not provide a basis for probable cause for arrest for a violation of specified offenses related to prostitution.

4) Prohibits the use of evidence that victims of, or witnesses to a serious felony, as specified, assault as specified, extortion, as specified, human trafficking, as specified, or stalking, as specified, were engaged in an act of prostitution at or around the time they were the witness or victim to the crime in a separate prosecution for the crime of prostitution.

EXISTING LAW:

1) Makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. (Pen. Code 647 § (b)(1).)

2) Makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647(b)(2).)

3) Makes it a misdemeanor for a person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any
legal duty relating to the removal of a public nuisance. (Pen. Code § 372.)

4) Criminalizes the act of loitering in a public place with the intent to commit prostitution. (Pen. Code § 653.22.)

5) Punishes loitering in a public place with the intent to commit prostitution as a misdemeanor. (Pen. Code § 653.26.)

6) Mandates the following procedure prior to the introduction of possession of condoms as evidence that a crime was committed:
   
a) The prosecutor shall make a written motion to the court and to the defendant stating that the prosecution has an offer of proof of the relevancy of the possession by the defendant of one or more condoms;

b) The written motion shall be accompanied by an affidavit in which the offer of proof and shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing. After that determination, the affidavit shall be resealed by the court;

c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow questioning regarding the offer of proof made by the prosecution;

d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the prosecutor regarding the possession of condoms is relevant and is not inadmissible, the court may make an order stating what evidence may be introduced by the prosecutor; and,

e) An affidavit resealed by the court shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant’s counsel access to the sealed affidavit and the use of the information contained in the affidavit shall be limited solely to the pending proceeding. (Evid. Code § 782.1.)

7) Prohibits the admissibility of evidence that a victim of, or a witness to, extortion, stalking, or a violent felony, each as defined, has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime in order to prove the victim’s or witness’s criminal liability in a separate prosecution for the act of prostitution. (Evid. Code, § 1162.)

8) Defines a “serious felony” as murder or voluntary manslaughter, mayhem, rape, robbery, kidnapping, and approximately 40 other crimes, for which a person can be subjected to enhanced penalties under the Three Strikes Law. (Pen. Code, § 1192.7, subd. (c).)

9) Makes it a “wobbler” offense (felony or misdemeanor) to assault another person with a deadly weapon, including a firearm, or by means of force likely to produce great bodily injury and punishes that conduct by two, three, or four years, in the state prison, or as a
misdemeanor. (Pen. Code § 245, subds. (a)(1), (2), and (4).)

10) Makes it a “wobbler” offense (felony or misdemeanor) to willfully inflict corporal injury resulting in a traumatic condition upon a spouse or former spouse, cohabitant or cohabitant, fiancée or someone with whom the offender has a dating relationship, or mother or father of the offender’s child, and punishes that conduct in state prison for two, three, or four years, or as a misdemeanor. (Pen. Code § 273.5, subds. (a) and (b).)

11) Makes extortionate threats a felony and punishes that conduct by for two, three, or four years in the county jail. (Pen. Code, §§ 519 – 520.)

12) Makes it a felony to deprive or violate the personal liberty of another with the intent to obtain forced labor or services and punishes that conduct by imprisonment in the state prison for 5, 8, or 12 years. (Pen. Code, § 236.1, subd. (a).)

13) Makes it a felony to deprive or violate the personal liberty of another with the intent to commit the acts of pimping, pandering, or other sexual exploitation offenses, as specified, and punishes that conduct by imprisonment in the state prison for 8, 14, or 20 years. (Pen. Code, § 236.1, subd. (b).)

14) Makes it a felony to cause, induce, or persuade, or attempt to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, as specified, and punishes that conduct with 5, 8, or 12 years in state prison, or 15 years to life in state prison if the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1.)

15) Makes it a “wobbler” offense (felony or misdemeanor) to touch an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, and punishes that conduct by imprisonment in the state prison for two, three, or four years or as a misdemeanor. (Pen. Code § 243.4)

16) Makes it a “wobbler” offense (felony or misdemeanor) to willfully, maliciously, and repeatedly follow or willfully and maliciously harass another person and make a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, and punishes that conduct by imprisonment in the state prison or as a misdemeanor. (Pen. Code, § 646.9.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, “Sex workers are victims of violent crime at a disproportionately high rate. A 2014 study by the University of California, San Francisco and St. James Infirmary found that 60% of sex workers experience some form of violence while working. Specifically, 32% of sex workers reported a physical attack while engaging in sex work, and 29% reported being sexually assaulted while engaging in sex work. Unfortunately, this same report found that when a sex worker interacted with law
enforcement as the victim of a violent crime, 40% of their interactions were negative experiences. Moreover, condoms have historically been confiscated and used as a tool to incriminate sex workers for prostitution.

"It is critically important that sex workers feel safe reporting crimes and carrying condoms. If sex workers believe that reporting crimes and carrying condoms will get them arrested, they will do neither. The criminalization of prostitution results in sex workers largely not trusting law enforcement due to fear that they will be arrested or mistreated. This is particularly true for people of color, street-based sex workers, and transgender women who face the most harassment and arrests. Data from multiple countries link the criminalization of sex work with up to a five-fold increase in the risk of HIV or other sexually transmitted infections. Research is clear that sex workers must be able to carry condoms without fear that they will be confiscated or used to criminalize them to avoid exacerbating an already unsafe work environment or worsening our public health crisis.

"SB 233 simply prioritizes the health and safety of people engaged in sex work, including human trafficking victims, over their criminalization by prohibiting arrest for misdemeanor prostitution or drug offenses when this population comes forward as victims or witnesses of specified violent crimes. SB 233 also bans the use of condoms as evidence of sex work as a sensible, public health approach."

2) **Condoms as Evidence:** Generally, all relevant evidence is admissible in criminal proceedings unless it must be excluded under federal law (Proposition 8, approved by voters June 8, 1982, "Right to Truth-in-Evidence" provision) or the court may exclude the evidence if it will cause unnecessary delay, or create a danger of undue prejudice, confusion of the issues, or misleading the jury. (Cal. Const., art. I, § 28(f)(2); Evid. Code, § 352.)

In 2012, Human Rights Watch (HRW) released a report titled "Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities" which reviewed research literature on sex workers in Los Angeles and San Francisco and conducted its own interviews with persons either in sex trades or in organizations that provide health and social services to that population. In addition to specific cases in which possession of condoms was used as evidence of prostitution, HRW found that the threats of harassment of sex workers about possessing condoms had resulted in a prevalent belief that one is risking arrest and prosecution as a prostitute by having any condoms in one’s possession when approached by law enforcement. As a result, many sex workers stopped carrying any condoms or a sufficient number of condoms, thereby creating multiple opportunities for transmission of HIV to and from the sex worker.

In 2013, AB 336 (Ammiano), Chapter 403, Statutes of 2014, established a new evidentiary procedure for admitting condoms into evidence. According to the bill analysis on AB 336:

"This bill requires the prosecution to submit a sealed affidavit with an 'offer or proof' stating the relevance of condom evidence the prosecutor intends to introduce at the trial of a prosecution charge. It is likely that a prosecutor would argue that the possession of condoms – especially more than one or two condoms for use with an intimate partner – shows that the person was planning to engage in commercial sex transactions. 
"It would appear that the . . . concern about evidence of condom possession in a prostitution case might be that jurors might conclude that a person who carried numerous condoms was predisposed to engage in prostitution regardless of the particular facts of the alleged solicitation or act of prostitution, allowing conviction on assumptions about the defendant’s conduct on other occasions. The prosecution would likely counter that the defendant’s possession of numerous condoms at the time she or he is alleged to have solicited a person to engage in sexual conduct indicates that the interaction was for commercial purposes. That is, the condoms were essentially tools of the defendant’s trade."

(Sen. Com. on Public Safety, Analysis of Assm. Bill No. 336 (2013-2014 Reg. Sess.) as amended May 29, 2014, pp. 5-6.) This bill would repeal the evidentiary procedure established by SB 336 and instead states that possession of a condom is not admissible as evidence of a violation of specified crimes related to prostitution.

Because this bill would exclude potentially relevant evidence which is not required to be excluded under Proposition 8’s Truth-in-Evidence provision, nor is it excludable under federal law, a two-thirds vote by both the Assembly and the Senate is required for it to pass.

3) **Encouraging the Reporting of Serious Crimes by Granting Immunity from Arrest:** Last year, AB 2243 (Friedman), Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to, certain violent crimes were engaged in an act of prostitution at or around the time they were the witness or victim to the crime. The goal of that bill was to remove the fear of prosecution for victims and witnesses of violent crime in order to encourage reporting those crimes. Prostitution is punishable as a misdemeanor offense in California and those engaged in acts of prostitution are often victims of, or witnesses to, more serious crimes that are subject to more serious punishment. Therefore, by providing an evidentiary protection to a vulnerable population in exchange for evidence and testimony about more serious, often violent crimes, the effect of AB 2243 is likely to be a safer community.

The rationale behind AB 2243 is applicable to this bill, and, in fact, this bill would expand the protections of AB 2243. This bill also goes several steps further and states that victims and witnesses are granted immunity from arrest for both prostitution and drug possession misdemeanors. This bill aims to remove the fear of arrest for simple drug use/possession and prostitution-related misdemeanors, meaning that victims and witnesses should be more likely to seek law enforcement’s help and offer assistance in the investigation and prosecution of more serious cases. One important difference between AB 2243 and this bill is that AB 2243 was an evidentiary rule that prohibited the introduction of certain evidence in court whereas this bill prohibits law enforcement from even making an arrest.

Last year, the San Francisco Police Department announced a policy similar to immunity from arrest portion of this bill, which precipitated AB 2243. (Blumberg, *San Francisco Takes a Stand to Protect Sex Workers who Come Forward About Abuse*, The Huffington Post, Jan. 12, 2018, available at: https://www.huffingtonpost.com/entry/san-francisco-sex-workers-policy_us_5a58fa29e4b03c4189655459 [as of March 12, 2018].) Its policy states in pertinent part that:
The District Attorney’s Office will not prosecute persons for involvement in sex work or other forms of sex trade when they are victims or witnesses of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime. For purposes of this policy, persons will not be prosecuted for uncharged offenses including Penal code §§ 647(a), 647(b), 653.22, 372, and misdemeanor drug offenses, when reporting sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

Information gathered from a victim or witness of a violent crime who is engaged in sex work or other forms of sex trade including trafficked persons will not be used in any manner to investigate and prosecute that person, during the course of the investigation or in the future. So long as the person making the report does so truthfully, any statements they make shall not be used against them in the current investigation or in any future criminal action against them concerning this incident brought by this office for violation of Penal code §§ 647(a), 647(b), 653.22, 372.

One significant difference between the local policy in San Francisco and this bill is that the local policy appears to be explicitly directed towards the sex workers who are engaged in the act of selling services. This bill is broader in that it does not specify application to the sellers alone and includes the purchaser of services. Furthermore, this bill would add misdemeanor drug possession offenses to the types of crimes for which a person shall not be arrested if they are reporting the offenses enumerated in this bill.

4) **Argument in Support**: According to the *Ella Baker Center for Human Rights*: “The Ella Baker Center of Human Rights is writing in support of SB 233 (Wiener), a measure that will prohibit the arrest of persons in the sex trade who are reporting sexual assault, domestic violence and other violent crimes, or who are in possession of condoms. Based in Oakland, the Ella Baker Center for Human Rights works to advance racial and economic justice to ensure dignity and opportunity for low income people and people of color.

“Persons in the commercial sex trade through choice, circumstance or trafficking are subject to and witness extremely high rates of violence yet are often reluctant to report these crimes to law enforcement due to fear of arrest. SB 233 (Wiener) will create a pathway for persons in the sex trade to come forward and say “me too.”

“SB 233 (Wiener) also furthers important public health goals by preventing the possession of condoms to be used as evidence in prostitution-related crimes. Condoms have historically been confiscated and used as a tool to incriminate sex workers. Preventing the use of condoms in criminal prosecutions of prostitution will support sex workers’ ability to protect themselves, a practice that promotes better health for sex workers and their clients.

“The Ella Baker Center strongly believes that people who engage in sex work should not be unjustly criminalized, especially when they are taking steps to protect themselves and others by reporting violent crimes or carrying condoms. Prioritizing the health and safety of sex workers and trafficking survivors protects some of our most marginalized community members, including women of color and trans individuals who are disproportionately
criminalized for sex work.”

5) **Argument in Opposition:** According to the *California District Attorneys Association*: “SB 233 would legislatively prohibit condoms from being used as evidence of prostitution [PC §647(b)], lewd acts in public [P.C. §647(a)], loitering with the intent to commit prostitution [P.C. §653.22], and committing a public nuisance [P.C. §372], regardless of the circumstances of a particular case. Condoms would also be prohibited from being the basis for probable cause to arrest for the same offenses.

“Further, SB 233 would provide immunity from prosecution for misdemeanor drug crimes, prostitution, and committing a lewd act in a public place to any person who is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or other violent crime, regardless of whether or not there is corroboration of the reported crime.

“While we understand and appreciate the struggles of victims of human trafficking and sex workers, SB 233 is bad public policy and sets a bad precedent. There are already sufficient measures in place to protect these individuals, and this measure protects the buyers of sex trafficking as well as the workers.

“The determination of what is and what is not evidence in a criminal investigation and of what constitutes probable cause to arrest should not be legislated. Indeed, even with respect to the admissibility of evidence in a criminal case, the California Constitution provides that all evidence is admissible, except by a 2/3 vote of the legislature, demonstrating the preference for admissibility.

“Likewise, the determination of what constitutes probable cause to arrest is a matter for law enforcement and judicial interpretation and not for the legislature. For these reasons, we must respectfully oppose SB 233.”

6) **Prior Legislation:**

   a) AB 2243 (Friedman) Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to a violent felony as specified, extortion, or stalking, were engaged in an act of prostitution at or around the time they were the witness or victim to the crime.

   b) AB 336 (Ammiano) Chapter 403, Statutes of 2014, established an evidentiary procedure for admitting condoms into evidence.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Erotic Service Providers Legal, Education, and Research Project (Co-Sponsor)
Sex Workers Outreach Project, Sacramento (Co-Sponsor)
St. James Infirmary (Co-Sponsor)
AIDS Healthcare Foundation
American Civil Liberties Union of California
APLA Health
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Women's Law Center
Citizens for Choice
City and County of San Francisco Department on the Status of Women
City and County of San Francisco, Board of Supervisors
City of West Hollywood
Conference of California Bar Associations
Desert AIDS Project
Desiree Alliance
Drug Policy Alliance
Ella Baker Center for Human Rights
Equality California
Free Speech Coalition
Gender Health Center
Global Women's Strike
Harvey Milk LGBTQ Democratic Club
Human Impact Partners
Human Rights Campaign
If/When/How: Lawyering for Reproductive Justice
Legal Services for Prisoners with Children
Los Angeles County District Attorney's Office
Los Angeles LGBT Center
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
Positive Women's Network-USA
Public Health Justice Collective
Religious Sisters of Charity
San Francisco AIDS Foundation
San Francisco District Attorney
San Francisco District Attorney's Office
San Francisco Police Department
Santa Barbara Women's Political Committee
Sex Workers Outreach Project-USA
Sex Workers' Outreach Project - Los Angeles
The Transgender Service Provider Network Los Angeles
The Women's Foundation of California
US PROStitutes Collective
Women of Color in the Global Women's Strike
Young Women's Freedom Center

10 Private Individuals

Oppose
Amended Mock-up for 2019-2020 SB-233 (Wiener (S))

Mock-up based on Version Number 96 - Amended Senate 4/23/19
Submitted by: Matthew Fleming, Assembly Committee on Public Safety

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

SECTION 1. Section 782.1 of the Evidence Code is repealed.

SEC. 2. Section 782.1 is added to the Evidence Code, to read:

782.1. The possession of a condom is not admissible as evidence in the prosecution of a violation of subdivision (a) or (b) of Section 647 of the Penal Code if the offense is related to prostitution, or Section 372 or 653.22 of the Penal Code.

SEC. 3. Section 647.3 is added to the Penal Code, to read:

647.3. (a) A person who reports being a victim of, or a witness to, a serious felony as defined in subdivision (c) of Section 1192.7, assault, as defined in subdivision (a) of Section 245, domestic violence, as defined in Section 273.5, extortion, as defined in Section 519, human trafficking, as defined in Section 236.1, sexual battery, as defined in subdivision (a) of 243.4, or stalking, as defined in Section 646.9 of the Penal Code, is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime shall not be arrested for either of the following offenses if they are related to the crime that they are reporting or if the person was engaged in the offense at or around the time that they were the victim of or witness to the crime they are reporting:

(1) A misdemeanor violation of the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).

(2) A violation of subdivision (a) or (b) of Section 647, a violation of Section 372, or a violation of Section 653.22, if the offense is related to an act of prostitution, or of Section 372 or 653.22.

(b) Possession of condoms in any amount shall not provide a basis for probable cause for arrest for a violation of subdivision (a) or (b) of Section 647 if the offense is related to an act of prostitution, or of Section 372 or 653.22.

SEC. 4. Section 1162 of the Evidence Code is amended to read:

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Evidence that a victim of, or a witness to, extortion as defined in Section 519 of the Penal Code, stalking as defined in Section 646.9 of the Penal Code, or a violent felony as defined in Section 667.5 of the Penal Code, a serious felony as defined in subdivision (c) of Section 1192.7, assault, as defined in subdivision (a) of Section 245, domestic violence, as defined in Section 273.5, extortion, as defined in Section 519, human trafficking, as defined in Section 236.1, sexual battery, as defined in subdivision (a) of 243.4, or stalking, as defined in Section 646.9 of the Penal Code, has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime is inadmissible in a separate prosecution of that victim or witness to prove his or her criminal liability for the act of prostitution.

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06/07/2019
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SUMMARY: Requires the Department of Justice (DOJ) to notify local law enforcement if it determines that a person prohibited from owning, purchasing, receiving, or possessing a firearm has attempted to acquire a firearm. Specifically, this bill:

1) States that if the DOJ determines that a person is prohibited from owning, purchasing, receiving, or possessing a firearm, as specified, the DOJ shall notify the local law enforcement agency with primary jurisdiction over the area in which the person was last known to reside.

2) States that if the person is prohibited from owning or possessing a firearm because of a mental illness, as specified, the department shall also notify the county department of mental health in the county in which the person was last known to reside.

EXISTING LAW:

1) Requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File; the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code § 30000, subd. (a).)

2) Limits access to the information contained in the Prohibited Armed Persons File to certain entities specified by law, through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000, subd. (b).)

3) Requires that upon entry into the Automated Criminal History System of a disposition for a specified conviction or any firearms possession prohibition identified by the federal National Instant Criminal Background Check System (NICS), the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration. (Pen. Code § 30005, subd. (a).)

4) Requires that upon an entry into any department automated information system that is used for the identification of persons who are prohibited by state or federal law from acquiring, owning, or possessing firearms, the DOJ shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration.
(Pen. Code § 30005, subd. (b).)

5) Establishes the Prohibited Armed Persons File which requires the DOJ, once it has a determination that a subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1996, or an assault weapon registration, or a .50 BMG rifle registration, to enter the following information into the file:

a) The subject’s name;

b) The subject’s date of birth;

c) The subject’s physical description;

d) Any other identifying information regarding the subject that is deemed necessary by the Attorney General;

e) The basis of the firearms possession prohibition; and,

f) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System. (Pen. Code § 30005, subd. (c).)

6) Requires the Attorney General to provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm. (Pen. Code § 30010.)

7) Requires the DOJ to submit an annual report to the Joint Legislative Budget Committee from March 1, 2015 until March 1, 2019 with all of the following information:

a) The degree to which the backlog in the Armed Prohibited Persons System (APPS) has been reduced or eliminated;

b) The number of agents hired for enforcement of the APPS;

c) The number of people cleared from the APPS;

d) The number of people added to the APPS;

e) The number of people in the APPS before and after the relevant reporting period, including a breakdown of why each person in the APPS is prohibited from possessing a firearm;

f) The number of firearms recovered due to enforcement of the APPS;

g) The number of contacts made during the APPS enforcement efforts; and,

h) Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog. (Pen. Code § 30015, subds. (b) and (c).)
FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author’s Statement:** According to the author, "In recent years, there have been a significant number of violent crimes perpetrated by individuals who are in unlawful possession of firearms. All too often, the offender is later determined to have been planning the offense or acting erratically. The public is left wondering if the aberrant behavior was reported.

“This bill requires the Department of Justice (DOJ) to notify local law enforcement if a prohibited person has attempted to purchase a firearm and the agency has primary jurisdiction over the area where the prohibited person was last known to reside. In the event that the reason the person has been prohibited from possessing a firearm is mental illness, the bill would, in addition, require the DOJ to notify the Department of Mental Health in the county in which the prohibited person was last known to reside.”

2) **APPS Mandates on DOJ, Existing and Growing Backlog, and Budget Shortfalls:** The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. The *San Francisco Chronicle* recently reported that the Department has reduced the backlog of prohibited persons from over 20,000 in 2013 to less than 9,000 today. (APPS 2018 Annual Report to the Legislature, DOJ, published Mar. 1, 2019, available at: https://oag.ca.gov/system/files/attachments/press-docs/APPS-2018_finaldocx.pdf [as of June 6, 2019]; see also Alexei Koseff, *California struggles to seize guns from people who shouldn’t have them*, San Francisco Chronicle, Feb. 18, 2019, available at https://www.sfchronicle.com/politics/article/California-struggles-to-seize-guns-from-people-13624039.php, [as of June 6, 2019].) However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on the DOJ to clear the list is evergreen. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

3) **SB 140 and the Most Recent DOJ APPS Report:** SB 140 (Leno) Statutes of 2013, appropriated $24 million from the Dealers Record of Sale (DROS) Special Account to the DOJ to fund enforcement of illegal gun possession by relieving weapons from prohibited persons. At the time of SB 140’s enactment, the Legislature made the following finding and declaration:
"The list of armed prohibited persons in California grows by about 15 to 20 people per day. There are currently more than 19,000 armed prohibited persons in California. Collectively, these individuals are believed to be in possession of over 34,000 handguns and 1,590 assault weapons. Neither the Department of Justice nor local law enforcement has sufficient resources to confiscate the enormous backlog of weapons, nor can they keep up with the daily influx of newly prohibited persons."

The 19,000+ cases on the APPS list at the time SB 140 was passed is referred to as the "APPS backlog." SB 140 required the DOJ to address the backlog and issue an annual report to the legislature for five years in order to provide updates on DOJ’s progress in reducing the backlog.

The most recent report was published on March 1, 2019. (APPS 2018 Annual Report to the Legislature, available at https://oag.ca.gov/system/files/attachments/press-docs/apps-2018.finaldocx.pdf. [as of March 4, 2019].) According to the DOJ report, the original 2013 backlog was 20,721 cases. (ld. at 6.) Of those original 20,721 cases, there are still 8,373 in the APPS system, which are listed as “pending.” (ld. at 6.) “Pending” cases are those in which a prohibited person is still believed to have a firearm in their possession, but DOJ is either unable to locate the individual or DOJ has exhausted all investigative leads and will not pursue further action unless and until it receives new information. (ld. at 21.)

In addition to the 8,373 pending cases, there are 538 cases from the original 2013 backlog which have yet to be fully investigated. DOJ explains in its report that “[t]he primary reason for the existence of those 538 cases is due to them being located in rural areas, far away from large population concentrations, and long distances from BOF offices.” (ld. at 6.) The Bureau of Firearms (BOF) currently has two regional offices, one in Sacramento and the other in San Diego. In addition, the BOF has four field offices, located in San Francisco, Fresno, Los Angeles, and Riverside.

DOJ cites several reasons for the persistence of the APPS cases and makes corresponding recommendations. (ld. at 17 - 18.) First, DOJ states that greater efforts must be made by courts, local law enforcement, probation and parole to confiscate firearms at the time of prohibition rather than going through the process of trying to locate a person and their firearm(s) some amount of time after they have become prohibited. Second, DOJ cites the attrition rate of special agents “primarily due to lagging salaries and incentives with comparable law enforcement agencies and the reduced pension tier relative to the Public Employees’ Pension Reform Act of 2013 (PEPRA).” (ld.) Third, DOJ recommends improved coordination and cooperation between the Department and local law enforcement agencies, specifically that local law enforcement agencies enforce the Bureau’s high recordkeeping standards to ensure that the data in APPS is as current as possible. (ld.) Finally, DOJ suggests replacing and modernizing the APPS database. (ld.)

4) **DOJ Cooperation with Local Law Enforcement on APPS Cases:** In regards to current cooperation efforts with local law enforcement, the DOJ stated the following in its report:

"The Department takes pride in its collaborative efforts with its local law enforcement partners. Since the inception of SB 140 (2013), the BOF continues to work with allied law enforcement agencies in an effort to reduce APPS numbers."
Experience has shown the most efficient and effective way of working APPS cases in a specific region or jurisdiction is by working collaboratively with local law enforcement agencies. While working jointly with local law enforcement agencies, cases are investigated and processed more efficiently, lost and stolen firearm reports are immediately handled by local law enforcement agencies, cases crossing local jurisdiction boundaries are further pursued by the Bureau, and local law enforcement agencies are often familiar with prohibited APPS individuals or their family members, making it easier to track down these individuals. When local law enforcement agencies pursue APPS cases independently, there can be a lack of consistency in working investigations until all leads are exhausted and often times local law enforcement agencies will not pursue investigative leads outside their normal jurisdiction, causing the case to remain unresolved. This is a problem that needs to be resolved.” (Id. at 15.)

According to the report, existing collaborative efforts with local law enforcement include the establishment of a joint task force in Contra Costa, a joint operation with the Los Angeles County Sheriff's Department, and APPS sweeps with local law enforcement agencies in Los Angeles, Ventura, and Santa Cruz counties. (Id. at 15-16.)

This bill would require DOJ to inform local law enforcement of prohibited persons in their jurisdiction so that they could take action independent of the BOF. Ideally, local law enforcement would also report to the DOJ when it is able to recover a firearm that DOJ has notified them about in order to avoid incomplete information in the APPS database.

5) **Argument in Support:** According to the Ventura County Board of Supervisors: “We believe that SB 257 can be part of the solution to ending gun violence by ensuring that firearms are kept out of the hands of those who present a danger to themselves or others. Your measure would require information sharing with law enforcement and county mental health agencies so local professionals can appropriately follow-up on potentially dangerous situations. For these reasons, the County of Ventura is pleased to support this measure.”

6) **Related Legislation:** AB 340 (Irwin), would authorize the County of Ventura to establish and implement a Disarming Prohibited Persons Taskforce (DPPT) team program, consisting of officers and agents from specified law enforcement agencies, for the purpose of, among other things, identifying, monitoring, arresting, and assisting in the prosecution of individuals who are armed and prohibited from possessing a firearm. AB 340 is pending hearing in the Senate Public Safety Committee.

7) **Prior Legislation:**

   a) SB 580 (Jackson), of the 2013-2014 Legislative Session, would have would appropriated the sum of $5,000,000 from the Firearms Safety and Enforcement Special Fund to the DOJ to contract with local law enforcement agencies to reduce the backlog of individuals who are identified by APPS as illegally possessing firearms. SB 580 died in the Assembly Committee on Appropriations.

   b) SB 140 (Leno) Chapter 2, Statutes of 2013, appropriated $24 million from the Dealers Record of Sale (DROS) Special Account to the DOJ to fund enforcement of illegal gun possession by relieving weapons from prohibited persons and required the DOJ to report
specified information to the Joint Legislative Budget Committee by March 1, 2015 and every March 1 until 2019.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California
Brady California United Against Gun Violence
California Sportsman's Lobby, Inc.
California Waterfowl Association
Crime Victims United of California
Outdoor Sportsmen's Coalition of California
Safari Club International Foundation
Ventura County Board of Supervisors

Opposition

None

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744
SUMMARY: Expands the testing requirements of a person who dies in a motor vehicle accident to include cannabinoids including delta-9-tetrahydrocannabinol (THC), opioids including fentanyl, benzodiazepines, methamphetamine and related amphetamines, and cocaine. Specifically, this bill:

1) Requires a coroner or medical examiner to perform screening and confirmatory tests of an expanded list of specified drugs, and requires a resulting report to include blood alcohol content and blood drug concentrations in the detailed medical findings, when available.

2) Requires a coroner or medical examiner to use antemortem samples, if available, if the decedent was hospitalized prior to death.

3) Expands the testing requirement to apply to a person involved in a motor vehicle accident whose death occurs within 48 hours of the accident, rather than 24 hours.

4) Requires a coroner or medical examiner to provide to the Department of the California Highway Patrol (CHP), in writing, chemical test results including blood alcohol content and blood drug concentrations, when available, related to the death of any person as the result of an accident involving a motor vehicle.

5) Applies to a county medical examiner the same requirements imposed on a county coroner related to the mandated chemical testing of a person involved in a motor vehicle accident resulting in death.

EXISTING LAW:

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

   a) Violent, sudden or unusual deaths;

   b) Unattended deaths;

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

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

   e) Known or suspected homicide, suicide or accidental poisoning;
f) Deaths suspected as a result of an accident or injury either old or recent;

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

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

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

j) Deaths in prison or while under sentence;

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

l) Deaths from occupational diseases or occupational hazards;

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

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

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

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

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

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

5) Requires the coroner, or the coroner’s appointed deputy, on being notified of a death occurring while the deceased was driving or riding in a motor vehicle, or as a result of the deceased being struck by a motor vehicle, to take blood and urine samples from the body of the deceased before it has been prepared for burial and make appropriate related chemical tests to determine the alcoholic contents, if any, of the body. Allows the coroner to perform other chemical tests including, but not limited to, barbituric acid and amphetamine derivative as deemed appropriate. (Gov. Code, § 27491.25.)

6) Requires that the detailed medical findings resulting from required examinations to include all positive and negative findings pertinent to the presence or absence of any alcoholic or other substance content. (Gov. Code, § 27491.25.)

7) Exempts from testing requirements a deceased person under the age of 15 years unless the surrounding circumstances indicate the possibility of alcoholic, barbituric acid, and amphetamine derivative consumption, and exempts from testing any death that occurs more
than 24 hours after the accident. (Gov. Code, § 27491.25.)

8) Requires every coroner, on or before the tenth day of each month, to report in writing to the CHP the death of any person during the preceding calendar month as the result of an accident involving a motor vehicle and the circumstances of the accident. (Veh. Code, § 20011.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, “SB 283 gives law enforcement the tools needed to quantify the causes of impairment in fatal collisions. This bill will update current law to require drug testing after fatal collisions, in addition to alcohol testing, reflecting more accurately the modern use of prescription and recreational drugs. Additionally, SB 283 will require testing in cases of death that occur within 48 hours of the collision, instead of just 24 hours, capturing significantly more data on fatal collisions.

“As California adjusts to the legalization of recreational marijuana and grapples with the opioid epidemic, the Legislature must give law enforcement every tool possible to understand and prevent future fatal collisions.”

2) **Need for this Bill:** According to the author, “On average, California experiences nearly 3,000 deaths annually due to car accidents. Unfortunately, many of the drivers involved in these accidents are driving impaired due to alcohol and/or drug consumption. In 2017, 56% of fatally injured drivers in Orange County had at least one substance, drugs and/or alcohol, in their system.

“Currently, local coroners and medical examiners are required to test deceased drivers and passengers for alcohol content, but not for drug content. With the legalization of recreational marijuana and the rise of opioid abuse, many new driving under the influence cases are due to drug use, not just alcohol use. For instance, Orange County experienced a 600% increase in driving under the influence of fentanyl cases from 2016 to 2017.

“Some local governments like Orange and San Francisco counties have voluntarily begun testing for drug content after fatal collisions; however, many of these cases are going undetected statewide because there is no requirement to test for a driver’s drug content after a fatal collision.

“Without accurate data on the causes of fatal collisions across the state, the Legislature cannot make sound, evidence-based policies to address the primary causes of these collisions.”

2) **Testing for Additional Chemicals:** Current law mandates testing of a decedent in a motor vehicle accident for alcohol, but makes testing for other chemicals discretionary. This bill would specify that testing *shall* be conducted to determine the presence of a wide range of chemicals including, but not limited to, cannabinoids including delta-9-tetrahydrocannabinol
(THC), opioids including fentanyl, benzodiazepines, methamphetamine and related amphetamines, and cocaine.

3) **24 to 48 hours:** This bill would expand mandatory testing to a person who dies within 48-hours of an accident, from 24 hours. This ultimately increases the number of deaths that trigger mandatory drug and alcohol testing and that will ultimately be tested and tracked, as specified. Both existing law and this bill are silent as to whether the report a coroner or medical examiner performs shall be made to the CHP when a person does not die at the scene of an accident, but at a later time.

4) **Argument in Support:** According to the *Foundation for Advancing Alcohol Responsibility*, “While not a new issue, drug-impaired driving has come into greater focus in recent years due to the increasing number of states that have legalized cannabis, including California, and the spread of the opioid and heroin epidemic. It is imperative that states collect accurate data on the causes of fatal collisions to inform evidence-based policies. Assembly Bill 551 will allow California to better quantify the magnitude of the drug and polysubstance-impaired driving problem by requiring drug testing after fatal collisions, in addition to alcohol testing. The bill will also require testing in cases of death that occur within 48 hours of the collision, as opposed to 24 hours, which will provide further data on fatalities. AB 551 will significantly improve impaired driving data collection and analyses and can serve as a model for other states. Responsibility.org strongly supports AB 551 and we urge all legislators to vote in favor of this legislation.

“The true magnitude and characteristics of the drug-impaired driving problem are not known due to significant data limitations due to a lack of consistent testing. However, the statistics that are available reveal that this issue is in need of urgent attention. In 2016, the most recent year for which data are available, the National Highway Traffic Safety Administration (NHTSA) Fatality Analysis Reporting System (FARS) found that drugs were present in 43.6% of fatally-injured drivers with a known drug test result.

“Further complicating the drug-impaired driving issue is the realization that it is not uncommon for drivers to take several impairing substances at the same time which typically is not captured, especially if alcohol is present. Research has continually shown that drugs used in combination or with alcohol produce greater impairment than substances used on their own. The combination of alcohol and marijuana is particularly risky as it can dramatically impair driving performance. The increased level of impairment and crash risk associated with polysubstance-impaired driving is concerning as is the rate at which this behavior appears to be occurring. According to FARS data, in 2016, 50.5% of fatally-injured drug-positive drivers were positive for two or more drugs and 40.7% were found to have alcohol in their system. New data released by the Washington Traffic Safety Commission identifies polysubstance impairment as the most common type of impairment found among drivers involved in fatal crashes. In fact, among drivers in fatal crashes between 2008 and

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1Unlike most drug tests, a person may test positive for cannabinoids due to marijuana consumption that occurred well before an incident and played no contributing role in an accident. The National Highway Transportation Safety Administration has noted that “specific drug concentration levels cannot be reliably equated with a specific degree of driver impairment.” National Highway Transportation Safety Administration, *Roadside Survey of Alcohol and Drug Use by Drivers* (February 2015).
2016 that tested positive for alcohol or drugs, 44% tested positive for two or more substances with alcohol and THC being the most common combination.

"Unfortunately, the prevalence of polysubstance-impaired driving is inevitably underreported. While the majority of law enforcement officers are trained to identify drivers who are impaired by alcohol, many officers are not trained to identify the signs and symptoms of drug-impairment. Moreover, it is easier for law enforcement to make an arrest and obtain a blood alcohol concentration (BAC) level from either a breath or blood sample than it is to complete an investigation for drug-impaired driving. The latter often requires an evaluation by a Drug Recognition Expert (DRE), a law enforcement officer with specialized training, who may not be readily available. Blood tests are also needed to confirm the presence of drugs in a suspect's system and due to delays in obtaining this sample, test results do not accurately reflect the concentration levels at the time of driving. The passage of AB 551 would ensure that in collisions where there is a fatality, the driver is tested for the presence of BOTH alcohol and drugs. This practice, which is already done in Orange and San Francisco Counties, will guarantee the collection of robust impaired driving data.

"The identification of polysubstance use among impaired drivers is also important from a supervision and treatment perspective. We support screening and assessment for every DUI offender. Research shows that repeat DUI offenders often suffer from multiple disorders. In one study, 41% of the participants had a drug-related disorder and 44% had a major mental health disorder that was not alcohol or drug-related. Without identifying and treating substance use and mental health disorders, long-term behavior change is unlikely. To address this problem, Responsibility.org and the Division on Addiction at Cambridge Health Alliance, a teaching affiliate of Harvard Medical School, launched the Computerized Assessment and Referral System (CARS). This revolutionary screening and assessment instrument generates immediate diagnostic reports that contain information about an offender’s mental health and substance issues, creates a summary of risk factors, and provides referrals to nearby treatment services. CARS is available for FREE download at http://www.cartrainingcenter.org. This initiative will help states better identify, sentence, supervise, and treat impaired drivers."

5) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "SB 283 requires coroners and medical examiners to test the body of a person killed in a motor vehicle accident for drugs as well as alcohol. While CACJ is supportive of collecting data in order to advance informed public policy, this bill could lead to the spread of misleading information. Unlike alcohol, most of the drugs that would be tested for under this bill do not have levels that reliably correspond to impairment. A person involved in an auto accident could test positive for a drug like marijuana even if they had not used for days or weeks. They could test positive without the drug being related to, or the cause of, the accident.

"CACJ believes that the data collected under this bill could be used to inform new criminal laws, even if the drugs identified were inconsequential to many of the fatalities."

6) **Related Legislation:** AB 551 (Brough), would expand the drug testing requirements of a person who dies in a motor vehicle accident. AB 551 was heard in this committee, and is currently before the Senate Public Safety Committee.
7) **Prior Legislation**: AB 540 (Pan), of the 2013-2014 Legislative Session, would have permitted the Department of Public Health to establish and maintain the California Electronic Violent Death Reporting System and to collect data on violent deaths as reported from data sources, including, but not limited to, death certificates, law enforcement reports, and coroner or medical examiner report. AB 540 was held in the Senate Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alcohol Justice  
American Automobile Association of Northern California, Nevada & Utah  
Auto Club of Southern California  
Diageo  
Foundation for Advancing Alcohol Responsibility  
Fullerton Police Department  
Orange County Sheriff's Department

**Opposition**

California Attorneys for Criminal Justice

**Analysis Prepared by**: Nikki Moore / PUB. S. / (916) 319-3744
ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 284 (Beall) – As Amended April 9, 2019

SUMMARY: Increases the fee paid by a county to the state in cases for committing a person to Division of Juvenile Justice (DJJ), as specified. Specifically, this bill:

1) Raises the fee from $24,000 to $125,000 when a county sends a person to DJJ; if the offense on which the commitment is based occurred when the person was 15 years of age or younger, or if the offense has a maximum aggregate sentence of fewer than seven years.

2) Applies the fee increase only in cases where the person is committed to DJJ after January 1, 2020.

3) Retains the $24,000 fee if a person is 16 years of age or older and the offense upon which the person is being committed has a maximum aggregate sentence of seven years or more.

EXISTING LAW:

1) Defines a person as a ward of the court if that person is any minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age; and any minor who is under the age of 12 years if that person committed an offense of: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury. (Welf. & Inst. Code, § 602.)

2) Provides that if a minor is adjudged a ward of the court, the court may make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor or nonminor, including medical treatment. Authorizes the court to commit the ward to DJJ, if the ward has committed an offense of: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; assault with the intent to commit rape, sodomy, oral copulation; bigamy; incest; and other specified crimes, and the ward is not otherwise ineligible for commitment to DJJ under the Welfare and Institutions Code. (Welf. & Inst. Code, § 731, subd. (a)(4).)
3) Sets forth the specified crimes that are eligible for placement of a ward with DJJ. (Welf. & Inst. Code, § 707, subd. (b).)

4) Prohibits the following individuals from being committed to DJJ: a ward who is under 11 years of age; a ward who is suffering from any contagious, infectious, or other disease that would probably endanger the lives or health of the other inmates of any facility; and a ward who has been or is adjudged a ward of the court pursuant to Welfare and Institutions Code, and the most recent offense alleged in any petition and admitted or found to be true by the court is not a specified offense that would warrant the ward being committed to DJJ. (Welf. & Inst. Code, § 733.)

5) Requires a county from which a person is committed to DJJ to pay to the state an annual rate of $24,000 while the person remains in an institution under the direct supervision of DJJ, or in an institution, boarding home, foster home, or other private or public institution in which the person is placed by DJJ, and cared for and supported at the expense of DJJ, as provided in this subdivision. Provides that this only applies to a person who is committed to the division by a juvenile court on or after July 1, 2012. Requires DJJ to present to the county, not more frequently than monthly, a claim for the amount due to the state. (Welf. & Inst. Code, § 912, subd. (a).)

6) Requires a county from which a person is committed to DJJ, on or after July 1, 2018, to pay to the state an annual rate of $24,000 for the time the person remains in an institution under the direct supervision of DJJ, or in an institution, boarding home, foster home, or other private or public institution in which the person is placed by DJJ, and cared for and supported at the expense of DJJ. Prohibits a county from paying the annual rate of twenty-four thousand dollars ($24,000) for a person who is 23 years of age or older. Applies to a person committed to DJJ by a juvenile court on or after July 1, 2018. (Welf. & Inst. Code, § 912, subd. (b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Author’s Statement:** According to the author, “The annual cost to the state to confine youth at the Division of Juvenile Justice (DJJ) averages more than $300,000 per person, yet counties contribute only $24,000 annually per youth. Best practices show local rehabilitation is more effective; however, the current low fee incentivizes counties to send individuals to DJJ, where they are isolated from family and community-based support.

“Justice involved youth are more effectively rehabilitated in small, close to home facilities, allowing for a smooth transition back into their communities. Nearly every county in California has its own secure, probation-run facility for youth, yet they operate at just 30 percent of capacity, and many have abundant treatment space for high-needs individuals. Much of this space was paid for by the state with $300 million in construction financing.

“In 1961, counties began paying a flat fee of $25 per month to house youth in a state facility. In 1996, California passed SB 681 (Hurtt) which established a sliding scale fee designed to keep most youth close to home. The Legislature continued to maintain an annual fee for counties with the intent to incentivize local rehabilitation.
“In 2012, SB 1021 established the $24,000 flat fee. With the costs of local juvenile halls, camps, and ranches generally exceeding $24,000 per year, and increasing annually, counties have financial incentive to send youth to the state facility.

“Youth sent to DJJ experience trauma of separation from family, and are often exposed to violence. DJJ’s most recent recidivism report shows that 74 percent of youth released in FY 2011-12 were rearrested within three years of release, 54 percent were reconvicted for a new offense, and 37 percent returned to a state institution (DJJ or prison).

“There are extreme discrepancies in counties’ rates of sending individuals to DJJ. Taxpayers in counties that manage much or all of their high-needs youth locally still pay to support DJJ due to other counties that rely most heavily on it.

“In order to reduce county reliance on DJJ and increase local juvenile justice innovation, SB 284 creates an incentive to keep youth closer to home by:

“(1) Increasing the cost of county confinement to DJJ from $24,000 to $125,000 for youth who meet either of the descriptions below:

   a. Committed for an offense that occurred when under 16 years of age, or

   b. Committed for an offense that would carry a sentence of fewer than 7 years in criminal court had they been tried as an adult.

“(2) Maintain a fee of $24,000 per youth per year for cases most at risk of transfer to adult court:

   a. Committed for an offense that occurred when they were 16 or 17 years old, and

   b. Committed for an offense that would carry a sentence of 7 or more years in criminal court had they been tried as an adult.

“Research shows that youth are uniquely capable of growth and change. In a supportive and safe environment, youth can thrive, heal, and acquire the skills they will need to return home safely. Having family nearby and remaining connected to community-based resources while confined is essential to youths’ wellness and ensures their success upon release.”

2) Prior Legislation on County Fees for DJJ Commitments: From 1961 to 1996, counties paid a $25 flat monthly fee for each youth committed to the California Youth Authority (CYA), which is now DJJ. By the mid-1990s, the CYA population exceeded 9,000 wards; the department’s facilities were significantly overcrowded. (Legislative Analyst’s Office (LAO), Analysis of the 1995-1996 Budget Bill, Available at https://lao.ca.gov/analysis_1996/a96d2.html.)

In 1995, CYA’s average annual cost of housing and caring for a ward was $31,200 per offender. (Id.) SB 681 (Hurtt), Ch. 6, Stats. of 1996, increased the fee from $25 to $150 per month per youth, and established a sliding fee scale to charge counties an increasingly higher fee for sending lower level offenders to CYA. This was the first of several efforts by the Legislature to incentivize counties to keep less serious offenders located at the local level,
and spur them to invest in prevention and early intervention programs. Within a year of SB 681’s passage, commitments to CYA dropped 25 percent. (LAO, Analysis of the 1998-1999 Budget Bill, Judiciary and Criminal Justice Chapter, p. 100, pdf available at https://lao.ca.gov/Publications? Year=1998&CategoryID=3&Type =,&phrase=.) Since then, this Legislature has passed a number of funding mechanisms to assist local governments in preventing juvenile crime, supporting alternatives to detention, and retaining youth at the county level. (See AB 1913 (Cardenas), Ch. 353, Stats. 2000; SB 81 (Comm. on Budget), Ch. 175, Stats. 2007; and SB 678 (Leno), Ch. 608, Stats. 2009.)

The Legislature has also amended or proposed to further amend the fee structure for counties sending youths to DJJ since SB 681 was enacted. Proposition 21, passed by the voters in March 2000, narrowed the sliding fee scale and required the state to pay the full per capita cost for each person committed to CYA who is convicted of specified gang-related offenses. (Pen. Code, §186.22, subd. (h).) AB 1758, enacted in 2003, required the counties to pay the state $176 per month per person for commitments to CYA or a specified percentage of the per capita cost, and provides that the fee is to be adjusted annually for inflation.

SB 81 (Comm. on Budget), Ch. 175, Stats. 2007, created several significant changes to the juvenile justice system, including prohibiting counties from sending to DJJ juveniles who commit non-violent, non-serious offenses. Changes to the fee structure occurred a few years later: SB 92 (Comm. on Budget), Ch. 36, Stats. 2011, established a flat fee of $125,000 per year per person committed to DJJ. However, the fee provision of SB 92 never went into effect. Instead, SB 1021 (Comm. on Budget), Ch. 41, Stats. 2012, replaced the fee in SB 92 and established the current level, a flat fee of $24,000 per year per DJJ commitment; it also lowered DJJ’s maximum age of jurisdiction from 25 to 23 years old. Notably, just last year, AB 1812 (Comm. on Budget), Ch. 36, Stats. 2018, increased the maximum age of jurisdiction for DJJ from 23 to 25 under certain circumstances.

This bill would impose a $125,000 flat fee to be paid by a county annually per each youth committed after January 1, 2020, in specified circumstances, discussed below.

3) **Narrow Limits on When the Increased Fee is Required:** This measure seeks to incentivize counties to retain minors at local facilities in all but the most serious cases. Under this bill, the counties will face a $101,000 increase in the fee for sending to DJJ: 1) a minor under 16 years old, regardless of the crime committed; and, 2) a minor who is committed for an offense that would carry a sentence of fewer than seven years in criminal court had they been tried as an adult.

This bill maintains the current $24,000 annual fee in cases in which the offense occurred when the person was 16 or older, and the person would have faced a prison sentence of seven years or greater had the person been tried in adult criminal court.

4) **Increased Fee May Endanger County Programs:** SB 284 proposes a substantial increase in the fee charged to a county for sending a person to DJJ. The Rural County Representatives of California and the Urban Counties of California write in opposition to the bill that the fee increase will drain funds away from other programs geared at keeping youth locally. They write, “From our counties’ perspective, DJJ is the referral of last resort. With investments in the local juvenile justice system over the last two decades and a shared commitment to the benefits of keeping as many youth as possible close to home during periods of rehabilitation
and detention, the DJJ population has dropped sharply – from a high in the late 1990s of close to 10,000 to fewer than 800 youth today. From a systems perspective, it is imperative to have an alternative for specialized treatment and for populations with particularly high needs, and DJJ fills that important role in the juvenile justice continuum. An increase in the annual fee as contemplated SB 284 would simply take resources away from counties – resources that now are likely dedicated to the in-depth local prevention and intervention programming that counties invest to keep as many youth close to home as possible.”

5) **Referrals to DJJ Vary by County:** Data from 2016 show the number of arrests and the ultimate number of people sent to DJJ by county. (Maureen Washburn, *Costs Rise Amid Falling Population at California’s Division of Juvenile Justice*, Center on Juvenile and Criminal Justice, p. 4-5, (2017), Available at [http://www.cjcj.org/uploads/cjcj/documents/costs_rise_amid_falling_populations_at_californias_division_of_juvenile_justice.pdf](http://www.cjcj.org/uploads/cjcj/documents/costs_rise_amid_falling_populations_at_californias_division_of_juvenile_justice.pdf)) According to the 2016 data, the 10 counties with the most juvenile felony arrests, ranging from 565 arrests in San Joaquin to 4,827 in Los Angeles, sent approximately three percent of arrestees to DJJ. The County of Orange sent only two wards to DJJ in 2016 compared to 1,196 arrests. Some smaller counties send a higher rate to DJJ, for example, Contra Costa and Kings Counties sent nearly 10 percent of felony arrestees to DJJ. Analyses point out that counties that do not utilize DJJ, including Orange, San Diego, San Francisco and Santa Clara, bear a disproportionate burden of funding DJJ as compared to counties with higher utilization rates.

6) **Argument in Support:** According to the *American Civil Liberties Union of California,* “The Division of Juvenile Justice (DJJ) is costly, dangerous, and inherently ineffective at rehabilitating youth. The facilities’ harsh, prison-like conditions exacerbate underlying needs and expose youth to the trauma of family separation. Deficiencies in the DJJ model are apparent in the institution’s high rate of recidivism: 74 percent of youth are rearrested within three years of release, 54 percent are convicted for a new offense, and 37 percent return to a state institution.”

“However, nearly every California county has its own secure, probation-run facility for youth, such as a camp, ranch, or juvenile hall. These local facilities are operating at less than one-third capacity and many have abundant treatment space for high-needs youth. Local alternatives to DJJ better align with best practices for effective rehabilitation, recommending that youth be held in small, close-to-home facilities to allow for a smooth transition back into their communities.

“Yet counties currently face a steep financial incentive to commit youth to DJJ, even when local placement or services would better address their needs. Counties pay a flat rate of $24,000 per year for youth committed to DJJ. This is just a fraction of the state’s average cost of confining a youth at DJJ, which exceeds $300,000 annually, and is far less costly than most local alternatives to DJJ. The result is extreme disparities in county rates of commitment to DJJ, with some counties relying heavily on DJJ given its low cost, while others opt for local treatment and services but must continue to subsidize DJJ through state tax dollars.

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“This bill aims to reduce reliance on DJJ and boost local innovation in all counties by creating an incentive to keep youth closer to home. SB 284 establishes a two-tiered county fee that increases the annual cost of sending a youth to DJJ from $24,000 to $125,000 for most youth committed to DJJ by a juvenile court and maintains a fee of $24,000 for youth most at risk of transfer to adult court. The bill would not prohibit counties from committing youth to DJJ, nor would it interfere with judges’ authority to place youth in the most suitable treatment setting. Rather, it aims to establish greater parity between the fee for committing a youth to DJJ and the cost of serving them in an alternative to state confinement.

“SB 284 presents California with an important opportunity to promote best practices for effective rehabilitation, reduce recidivism, and minimize county reliance on the harmful DJJ institutions by creating an incentive for retaining youth closer to home.”

7) Argument in Opposition: According to the California State Association of Counties, “Probation departments and counties throughout California have invested millions of dollars, countless staff time, and other resources to ensure our departments reflect the values we know to guide a therapeutic and rehabilitative environment for youth. The health, welfare, and safety of the youth and our communities continue to be the guiding principles in looking at the most appropriate response based on an individual’s circumstances. To this end, California counties and probation departments have clearly demonstrated a commitment to serving youth locally whenever possible, in the least restrictive setting, as evidenced by the over 74% decline in the youth committed to DJJ, and over 60% decline in juvenile detention in its entirety. In fact, over 90% of youth served in California’s juvenile justice system are safely treated in the community.

“That said the continuum of care for youth who enter our juvenile justice system is critical to have the kind of success in juvenile justice like California has seen in the past decade. While the vast majority of youth are safely served at the front-end of that continuum, in our communities, we must responsibly address all points in that continuum of care. For those youth at the other end of the continuum who qualify for DJJ placement and whose risks and needs rise to the level of requiring state investment and responsibility, the state has an important role to invest in youth who require this kind of specialized treatment. This option for youth is needed to be able to successfully rehabilitate and ultimately successfully return them to our communities.

“While we certainly understand the author’s goal of incentivizing counties to reduce the number of youth that they send to DJJ, the final decision as to where youth are placed following adjudication is one held and decided by a juvenile court judge. This legislation will do little to prevent youth from being sent to DJJ and instead result in significant financial impacts on counties. This fiscal impact, especially in smaller counties, will negatively impact counties and the progress we have made to enhance services and could put programming for youth in jeopardy.”

8) Prior Legislation:

a) AB 1812 (Comm. on Budget), Chapter 36, Statutes of 2018, requires a person committed DJJ after July 1, 2018 for a qualifying offense be discharged upon the expiration of a two-year period of control, or when he or she attains 23 years of age, whichever occurs later, unless an
order for further detention has been made by the committing court, as specified.

b) SB 1021 (Comm. on Budget), Chapter 41, Statutes of 2012, changed the fee counties are required to pay the state incarcerate a youth in the DJJ from $125,000 per year to $24,000 per year fee for any offender committed on or after July 1, 2012.

c) SB 92 (Comm. on Budget), Chapter 36, Statutes of 2011, eliminated the sliding scale reimbursement scheme and created a flat fee of $125,000 for the counties to reimburse the state for annually for each youth committed to DJJ, except those exempted by Proposition 21.

d) SB 81 (Comm. on Budget), Chapter 175, Statutes of 2007, prohibited counties from committing low-risk youth to the state system. Created the Youthful Offender Block Grant Program, which awards counties a noncompetitive grant amount of more than $100 million annually for youth with higher-order needs retained at the county.

e) AB 1758 (Comm. on Budget), Chapter 158, Statutes of 2003, increased the sliding scale fee that counties paid the state in two ways: First, it increased the flat fee counties paid to the state for wards in categories 1 through 4 from a monthly rate of one $150 per month per juvenile to $176 per month. Second, it required the per-capita institution cost used to calculate the sliding scale fee for wards in categories 5 through 7 to be set at $36,504 and adjusted annually to reflect increases in the California Consumer Price Index for All Urban Consumers.

f) AB 1913 (Cardenas), Chapter 353, Statutes of 2000, created the Schiff-Cardenas Crime Prevention Act/Youth Justice Crime Prevention Act and the Juvenile Justice Crime Prevention Act (JCPA) funding stream, which provides more than $100 million annually to counties with the intent to support the expansion of juvenile justice services and alternatives to detention at the local level.

g) Proposition 21, as approved by the voters on March 7, 2000, eliminated fees charged to the county for sending certain youth charged with specified gang related offenses to DJJ, and declared those costs be borne by the state.

h) SB 2055 (Costa), Ch. 632, Statutes of 1998, provided that, effective January 1, 1999, the sliding scale charge to counties for CYA commitments be based on the CYA's marginal institutional cost (about $16,000) rather than the per capita institutional cost (about $33,000). Established the Statewide Juvenile Justice Program Development Fund and authorizes the Board of Corrections (BOC) to provide competitive grants from for programs and facilities in a manner allowing a county to house the maximum number of wards in county facilities.

i) SB 681 (Hurtt), Chapter 6, Statutes of 1996, Instituted a sliding scale fees for youth committed to DJJ for lesser offenses (Categories 5-7) in order to create an incentive for counties to retain youth locally. Fees were assessed as a percentage of per capita institutional cost (50%, 75%, and 100% for Category 5, 6, and 7, respectively). For youth with higher-level offenses (Categories 1-4) counties paid a nominal fee.
REGISTERED SUPPORT / OPPOSITION:

Support

Center on Juvenile and Criminal Justice (Co-Sponsor)
Communities United for Restorative Youth Justice (Co-Sponsor)
Community Works (Co-Sponsor)
Motivating Individual Leadership for Public Advancement (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
Alliance for Boys and Men of Color
American Civil Liberties Union of California
Asian Americans Advancing Justice - California
Bend the Arc: Jewish Action
CA Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
California School-Based Health Alliance
California United for a Responsible Budget
Californians for Safety and Justice
Ceres Policy Research
Children Now
Children's Defense Fund-California
Courage Campaign
Disability Rights California
Drug Policy Alliance
East Bay Community Law Center
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Freedom 4 Youth
Friends Committee on Legislation of California
Further the Work
Immigrant Legal Resource Center
Initiate Justice
John Burton Advocates for Youth
Just Detention International
League of Women Voters of California
Legal Services for Prisoners with Children
Los Angeles County District Attorney's Office
National Association of Social Workers, California Chapter
National Center for Youth Law
National Juvenile Justice Network
Oakland Rising
Pacific Juvenile Defender Center
Project Rebound Consortium
Re:Store Justice
Root & Rebound
RYSE Center
San Francisco Public Defender's Office
Silicon Valley De-Bug
The W. Haywood Burns Institute
Urban Peace Institute
Urban Peace Movement
Young Women's Freedom Center
Youth ALIVE!
Youth Law Center

Oppose

California State Association of Counties
Chief Probation Officers of California
Del Norte County Board of Supervisors
Rural County Representatives of California
Sacramento County Board of Supervisors
Service Employees International Union, Local 1000
Urban Counties of California

Analysis Prepared by: Nikki Moore / PUB. S. / (916) 319-3744
ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 394 (Skinner) – As Amended June 6, 2019

SUMMARY: Authorizes the superior court, in agreement with the district attorney and public defender, to establish a pretrial diversion program for primary caregivers of minor children. Specifically, this bill:

1) Allows the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender or the contract public defender’s office, to agree in writing to establish and conduct a pretrial diversion program for primary caregivers.

2) Specifies that the program may include, but is not limited to, parenting classes, family and individual counseling, and other classes, treatment and training programs.

3) Provides that the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant if the defendant meets all of the following requirements:
   a) The defendant is a custodial parent or legal guardian of a child under the age of 18 years who presently resides in the same household as that child, and, either alone or with the assistance of other household members, presently provides a significant portion of the necessary care or financial support of that child;
   b) The defendant has been advised of, and waives, the right to a speedy preliminary hearing and trial, and to a trial by jury;
   c) The defendant agrees to comply with the requirements of the program;
   d) The court determines that defendant does not pose an unreasonable risk of danger to public safety or to the custodial child, if allowed to remain in the community; and,
   e) The defendant is not charged with a serious felony or violent felony, as specified.

4) States that in determining whether the defendant poses an unreasonable risk if allowed to remain in the community, the court may consider the opinions of both the prosecutor and defense counsel, as well as the defendant’s violence and criminal history, the current charged offense, the behavior towards the minors, and any other factors deemed appropriate.

5) Provides that the court on its own motion, the prosecutor, or the probation department, may move to reinstate criminal proceedings if it appears that the defendant is either performing unsatisfactorily in the program, or if the defendant is convicted of a felony or any offense
that reflects a propensity for violence subsequent to entering the program.

6) Requires the court, after notice to the defendant, to hold a hearing to determine whether to reinstate criminal proceedings.

7) Requires the court to schedule the matter for further proceedings if it finds that the defendant is not performing satisfactorily in the program or has been convicted of a felony or any offense that reflects a propensity for violence.

8) Entitles a defendant who has performed satisfactorily on diversion to dismissal of the criminal charges.

9) Provides that upon successful completion of diversion and dismissal of the charges, the arrest upon which the diversion was based shall be deemed to never have occurred and the court shall order access to the arrest record restricted, as specified.

10) Prohibits the use of, without the defendant’s consent, an arrest record or any record generated as a result of the defendant’s diversion in any way that could result in the denial of any employment, benefit, license, or certificate.

11) Requires the defendant be informed that an order to seal arrest records after successful completion of diversion has no effect on a criminal justice agency’s ability to access and use those sealed records and information regarding sealed records.

EXISTING LAW:

1) Defines pretrial diversion as “the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.” (Pen. Code, § 1001.1.)


3) Excludes specified driving under the influence offenses from pretrial diversion eligibility. (Pen. Code, § 1001.2, subd. (a).)

4) Provides that the district attorney of each county shall review annually any misdemeanor diversion program adopted by the county, and no program shall continue without the approval of the district attorney. No person shall be diverted under a program unless it has been approved by the district attorney. (Pen. Code, § 1001.2, subd. (b).)

5) States that the prosecutor is not authorized to determine whether a particular defendant shall be diverted. (Pen. Code, § 1001.2, subd. (b).)
6) Specifies that at no time shall a defendant be required to make an admission of guilt as a prerequisite for placement in a pretrial diversion program. (Pen. Code, § 1001.3.)

7) Provides that a defendant in a diversion program is entitled to a hearing, as set forth by law, before pretrial diversion can be terminated for cause. (Pen. Code, § 1001.4.)

8) States that if the defendant has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed at the end of the period of diversion. (Pen. Code, § 1001.7.)

9) Authorizes a person who has successfully completed pretrial diversion to petition a court to issue an order to seal the arrest records for the diverted offense. (Pen. Code, § 851.87.)

10) Provides that any record filed with the Department of Justice (DOJ) shall indicate the disposition in diverted cases. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The participant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the participant’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.9, subd. (a.).)

11) Requires an advisement to the participant in a diversion program informing him or her that, regardless of the successful completion of diversion, the arrest record may be disclosed in response to a peace officer application request and the participant is obligated to disclose the arrest if applying for employment as a peace officer. (Pen. Code, § 1001.9, subd. (b.).)

12) States that, notwithstanding an order to seal arrest records for a diverted offense, a criminal justice agency retains the ability to access and use those sealed records. (Pen. Code, § 1001.9, subd. (c.).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, “SB 394 protects dependent children from being separated from their caregiver by providing the primary caregivers with the support they need to remain in the home.

   “SB 394 diverts eligible defendants out of the traditional system and into the pretrial diversion program where they required to participate in programming such as: housing, employment, parenting, counseling, financial literacy, drug and alcohol treatment, or mental health screening and treatment.

   “Upon satisfactory completion of the diversion program, the charges will be dismissed, and the primary caregiver and dependent child will not be saddled with the debilitating collateral consequences of a criminal conviction.”
2) **Diversion Programs:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume.


This bill would authorize courts, in concurrence with the district attorney and the public defender of the county, to establish a pretrial diversion program diversion program for primary caregivers of minor children. This bill would also require that a defendant meet specific eligibility criteria including that the defendant is a custodial parent or legal guardian of a minor child, presently resides in the same household as that child, and either alone or with the assistance of other household members, presently provides a significant portion of the necessary care or financial support of that child. Further, in order to grant diversion, the court must be satisfied that the defendant determines that defendant would not pose an unreasonable risk of danger to public safety or to the custodial child, if allowed to remain in the community. A defendant charged with a serious or violent felony would be excluded from eligibility under the provisions of this bill.

3) **Impact of Incarceration on Dependent Children:** According to a 2017 article published by the National Institute of Justice (NIJ), children of incarcerated parents are “hidden victims” of the criminal justice system. These children often face a multitude of challenges including: psychological strain, antisocial behavior, suspension or expulsion from school, economic hardship, and criminal activity. (Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NIJ Journal No. 278, March 2017, available at: [https://www.nij.gov/journals/278/Pages/impact-of-incarceration-on-dependent-children.aspx].) The article acknowledges that because each child and case is unique, “It is difficult to predict how a child will fare when a parent is intermittently or continually incarcerated, and research findings on these children's risk factors are mixed.” (*Ibid.*)

According to the NIJ, the most common consequence of parental incarceration appears to be antisocial behavior, “which describes any number of behaviors that go against social norms, including criminal acts and persistent dishonesty.” Other psychological problems include depression.

The NIJ article notes that research indicates that the imprisonment of a parent will lead to a cycle of intergenerational criminal behavior. Further, one study found that children who have incarcerated mothers “had much higher rates of incarceration — and even earlier and more frequent arrests — than children of incarcerated fathers.”
Another impact described in the NIJ article is economic well-being, as most children with incarcerated parents have restricted financial resources available for their support. Finally, the article notes that the research suggests that the incarceration of a parent may affect educational attainment.

As for the propensity of the problem, the article states that the estimates on the number of who have incarcerated parents vary; but that one report found that the number of children who have experienced parental incarceration may range from 1.7 million to 2.7 million. The data further shows that children from communities of color are more likely to have an incarcerated parent than white children.

4) **Equal Protection Considerations**: This bill would establish a separate diversion program for primary caregivers of dependent children which is not available to defendants who are not primary caregivers. A state law that provides favorable treatment to one class of persons based solely on their status, while denying other classes of persons the same treatment may raise equal protection implications.

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.)

Under the provisions of this bill, the allegation would be that persons who commit the same crime might be treated differently based on whether or not the perpetrator is a parent who is primary caregiver of a dependent child.

The courts have used a three-tier system in order to determine whether a statute violates the equal protection clause: strict scrutiny, intermediate scrutiny, and minimal scrutiny. Where legislation does not burden a suspect class or a constitutionally protected right, then the legislative act faces minimal scrutiny. Equal protection of the law is denied only where there is no “rational relationship between the disparity of treatment and some legitimate governmental purpose.” (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) Under the minimal level of equal protection analysis, great deference is given to legislative determinations. (*Id.* at p. 887.) “A state may provide for differences as long as the result does not amount to invidious discrimination. Equal protection ... require[s] that a distinction made have some relevance to the purpose for which the classification is made.” (*People v. Cruz* (2012) 207 Cal.App.4th 664, 675, citations omitted.)

The stated goal of this primary caregiver diversion program is to avoid the detrimental impacts that parental incarceration has on minor, dependent children. This would appear to be a legitimate state interest.

Further, it should be noted that although most diversion programs are offense specific, there are several diversion programs which make eligibility contingent on the nature of the offender. For example, the Legislature established a diversion program for defendants diagnosed with qualifying mental health disorders. (Pen. Code, § 1001.36, subd. (a).) There
is also a diversion program for persons with cognitive developmental disabilities. (Pen. Code, § 1001.20 et. seq.) And there is diversion program available for members of the military and veterans. (Pen. Code § 1001.80.)

Moreover, several courts have found that equal protection principles do not require the Legislature to make diversion uniformly available. (See e.g. People v. Superior Court (Skoblov) (1987) 195 Cal.App.3d 1209, 1214-1218 [addressing an equal protection challenge to misdemeanor diversion because it was not offered in all counties]; People v. Edwards (1991) 235 Cal.App.3d 1700, [addressing an equal protection challenge based on ineligibility for drug diversion based on a specific offense].)

5) **Argument in Support:** According to the National Association of Social Workers California Chapter, “The incarceration of a parent is an inherently traumatic event for a child of any age. A study published in the September 2018 issue of the journal Pediatrics found that the incarceration of a parent was associated with unhealthy behaviors in young adulthood, even after controlling for other variables. This finding builds on previous research which has established that parental incarceration is associated with learning delays and behavioral problems [...] and is detrimental to health in childhood and adulthood,’ with significantly higher rates of asthma, HIV/AIDS, depression, anxiety, and posttraumatic stress disorder among those whose parents were incarcerated (“Health Care Use and Health Behaviors Among Young Adults With History of Parental Incarceration”). No child, of course, should live in an unsafe home; but all too often, parents are jailed for minor, nonviolent offenses, removed from their children when there is no threat to the child’s well-being.

“SB 394 (Skinner) would reduce the trauma of parental incarceration by allowing parents who are their children’s primary caregivers to complete a specially designed diversion program rather than face jail time for minor, nonviolent offenses—thus avoiding the punishment of children for their parents’ deeds.”

6) **Argument in Opposition:** According to the California District Attorneys Association, “This bill would create a new pretrial diversion scheme, singling out one class of individuals for disparate treatment under the law; allowing those who provide primary care for children, financially or otherwise, to avoid accountability for their crimes.

“The following cases offer legal support as to why disparate treatment should be avoided: Eisenstadt v. Baird (1972) 405 U.S. 438 [statute permitting married persons to obtain contraceptives to prevent pregnancy but prohibiting distribution of contraceptives to single persons for that purpose violates equal protection clause]; Williams v. State (Ala. Crim. App. 1986) 494 So.2d 819 [marital exemption to forcible sodomy statute was not rationally based and thus violated equal protection clause of Fourteenth Amendment].

“AB 394 would also jeopardize public safety by hiding the commission of criminal offenses to future employers who may come to rely on the integrity of the employee for financial and other sensitive matters....

“In Los Angeles County alone, there were 284,433 misdemeanors filed in FY 2014-15. SB 394 would allow many of these defendants (plus a sizeable cohort of 1170(h) felons) to make the case for diversion based on a claim that he or she is the primary caregiver, whether financially or through emotional support and care. In addition to the time this would take up
front, because this is pre-plea diversion, the court would have to leave all of these cases open for up to two years while the defendant participates in the program.

“Finally, SB 394 seems to ignore the reality that many of these crimes have victims. The bill lacks even basic language to address how victim restitution would be impacted in the event of a case dismissal and/or during the pendency of a lengthy diversion process.

“Under current law, the court already has the discretion to consider the defendant’s contribution to the family unit in determining what the appropriate sentence is for the offense committed. The probation department is in the best position to determine the appropriate services for a defendant that is placed on probation. And, the resources and infrastructure already exist for probation.”

7) **Prior Legislation:**

a) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, in pertinent part, created a diversion program for repeat theft offenders, and sunsets the program on January 1, 2021.

b) AB 1810 (Assembly Budget Committee), Chapter 34, Statutes of 2018, allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community.

c) AB 596 (Choi), of the 2017-2018 Legislative Session, would have provided that a referral to diversion qualifies as a conviction for purposes of a victim seeking and securing restitution. AB 596 was referred to this Committee and the hearing was cancelled at the request of the author.

d) AB 994 (Lowenthal), of the 2013-2014 Legislative Session, would have required each county to establish and maintain a pretrial diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed.

e) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Attorneys for Criminal Justice  
California Public Defenders Association  
California State PTA  
Disability Rights California  
Ella Baker Center for Human Rights  
Friends Committee on Legislation of California  
Legal Services for Prisoners with Children  
National Association of Social Workers, California Chapter
Opposition

California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Riverside Sheriffs' Association

Analysis Prepared by:  Sandy Uribe / PUB. S. / (916) 319-3744
SUMMARY: Requires the President pro Tempore of the Senate and the Speaker of the Assembly to each appoint a member to the Commission on Peace Officer Standards and Training (POST) who is not a peace officer.

EXISTING LAW:

1) Establishes POST within the Department of Justice. The commission consists of 15 members appointed by the Governor, after consultation with, and with the advice of, the Attorney General and with the advice and consent of the Senate. Racial, gender, and ethnic diversity shall be considered for all appointments to the commission. (Pen. Code, § 13500, subd. (a).)

2) States that the commission shall be composed of the following members:

   a) Two sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, peace officers who are deputy sheriffs or city police officers, or any combination thereof;

   b) Three sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chief of police;

   c) Four peace officers of the rank of sergeant or below with a minimum of five years’ experience as a deputy sheriff, city police officer, marshal, or state-employed peace officer for whom the commission sets standards. Each member shall have demonstrated leadership in the recognized employee organization having the right to represent the member;

   d) One elected officer or chief administrative officer of a county in this state;

   e) One elected officer or chief administrative officer of a city in this state;

   f) Two members who shall not be peace officers;

   g) One educator or trainer in the field of criminal justice; and,

   h) One peace officer in California of the rank of sergeant or below with a minimum of five years of experience as a deputy sheriff, city police officer, marshal, or state-employed peace officer for whom the commission sets standards. This member shall have demonstrated leadership in a California-based law enforcement association that is also a presenter of POST-certified law enforcement training that advances the professionalism
of peace officers in California. (Pen. Code, § 13500, subd. (b).)

3) States that the Attorney General shall be an ex officio member of the commission. (Pen. Code, § 13500, subd. (c).)

4) States that of the members first appointed by the Governor, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor. (Pen. Code, § 13500, subd. (d).)

5) States that the Governor shall designate the chair of the commission from among the members of the commission. The person designated as the chair shall serve at the pleasure of the Governor. The commission shall annually select a vice chair from among its members. A majority of the members of the commission shall constitute a quorum. (Pen. Code, § 13501.)

6) States that members of the commission shall receive no compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. (Pen. Code, § 13502.)

7) States that the commission has the following powers:

   a) To meet at those times and places as it may deem proper;

   b) To employ an executive secretary, and necessary clerical and technical assistants;

   c) To contract with other agencies, public or private, or persons as it deems necessary for the purpose of services, facilities, studies, and reports to the commission that will best assist it to carry out its duties and responsibilities;

   d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions;

   e) To develop and implement programs to increase the effectiveness of law enforcement and when those programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs;

   f) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government;

   g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it. The commission shall not have the authority to adopt or carry out a regulation that authorizes the withdrawal or revocation of a certificate previously issued to a peace officer; and,
h) The commission shall not have the authority to adopt or carry out a regulation that authorizes the withdrawal or revocation of a certificate previously issued to a peace officer. (Pen. Code, § 13503.)

8) Establishes the Innovations Grant Program within the Commission on Peace Officer Standards and Training to grant funds on a competitive basis to qualified public and private entities for the purpose of fostering innovations in training and procedures for law enforcement officers with the goal of reducing the number of officer-involved shootings statewide. (Pen. Code, § 13509, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement:** According to the author, "California is at a critical point in its history regarding law enforcement and its relationship with communities across the state. It is incumbent upon the State Legislature and all state leaders to thoroughly review and responsibly strengthen standards and training for law enforcement in the state. These goals will be furthered by ensuring POST's important work is informed by a more diverse membership, including voices selected by the Legislature to represent their communities."

2) **Commission on Peace Officer Standards and Training:** Otherwise known as POST, the Commission on Peace Officer Standards and Training was formed in 1959 by the Legislature to establish California law enforcement training standards. (Pen. Code. 13500, subd. (a).) The Legislature has increased efforts to provide resources to POST; in the past two years, budget allocation to POST has nearly doubled. (2019-2020 Governor's Budget: Corrections and Rehabilitation, [http://www.ebudget.ca.gov/budget/2019-20/#!/Agency/5210](http://www.ebudget.ca.gov/budget/2019-20/#!/Agency/5210).) SB 399 will provide more perspectives and ongoing dialogue, with the addition of more members who are not peace officers.

3) **Argument in Support:** According to the American Civil Liberties Union of California, "POST plays a critical role in California policing, setting minimum selection and training standards for California law enforcement, developing and running law enforcement training programs, improving law enforcement management practices, and reimbursing local law enforcement agencies for training...California is at a critical point in its history regarding law enforcement and its relationship with communities across the state. It is incumbent upon the state legislature and all state leaders to thoroughly review and responsibly strengthen standards and training for law enforcement in the state. These goals will be furthered by ensuring POST's important work is informed by a more diverse membership, including voices selected by the legislature to represent their communities."

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

5) **Related Legislation:**

a) SB 230 (Caballero), would require POST to, among other things, develop guidelines for adoption by law enforcement agencies for use of force. SB 230 is pending referral in the Assembly Rules Committee.
b) AB 165 (Gabriel), would require POST to develop and implement a course of training regarding Gun Violence Restraining Orders for peace officers and incorporate it into the court of basic training. AB 165 is pending referral in the Senate Rules Committee.

c) AB 680 (Chu), would require POST to adopt two mental health training courses for local public safety dispatchers, a basic training course of at least four hours, and a continuing education course of at least one hour. AB 680 is pending referral in the Senate Rules Committee.

d) AB 1052 (Chu), would require the basic peace officer course curriculum on the topic of hate crimes to include a specified hate crimes video developed by POST, and require the development of a peace officer in-service hate crimes refresher course to be taken every three years. AB 1052 is pending referral in the Senate Rules Committee

6) Prior Legislation

a) SB 566 (Ridley-Thomas), of the 2007-2008 Legislative Session, would have revised the characteristics of the four rank and file members of the Commission of Peace Officer Standards and Training. SB 566 was vetoed by the Governor.

b) AB 1229 (Carter), Chapter 409, Statutes of 2007, added an additional rank and file peace officer to the Commission on Peace Officer Standards and Training.

c) AB 1334 (Lowenthal), Chapter 702, Statutes of 1999, increased the membership of the commission to 14 members by increasing the number of peace officer members with the rank of sergeant or below from three to four.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California

Opposition

None

Analysis Prepared by: Lorraine Black / PUB. S. / (916) 319-3744
Date of Hearing: June 11, 2019
Counsel: David Billingsley

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

SB 557 (Jones) – As Amended June 6, 2019

SUMMARY: Makes court documents related to a defendant's mental competency in criminal proceedings confidential. Specifically, this bill:

1) Specifies that all documents submitted to the court related to specified proceedings regarding the defendant's mental competence are presumptively confidential, except as otherwise provided by law.

2) Requires the court to retain such documents in the confidential portion of the court’s file.

3) Requires counsel for the defendant and prosecution to maintain the documents as confidential.

4) Specifies that a motion, application, or petition to inspect or copy the documents shall be decided in accordance with the rule of court regarding the unsealing of court records.

5) States that the defendant, counsel for the defendant, and the prosecution may inspect, copy, or utilize the documents, and any information contained therein, without an order by the court, for purposes related to the defense, treatment, prosecution, and safety of the defendant, and for the safety of the public.

6) States that the requirements of this bill apply to all documents submitted to a court on or after January 1, 2020.

7) Allows the court to treat documents submitted prior to January 1, 2020, as confidential.

8) Allows the prosecuting attorney, defendant, or counsel for the defendant to request that the court treat documents submitted prior to January 1, 2020, as confidential.

9) Finds and declares that in order to protect the privacy of defendants with respect to personal information contained within expert reports and other documents that are prepared as part of mental competency hearings, it is necessary that those documents be presumptively confidential, except as otherwise provided by law.

EXISTING LAW:

1) Provides that a person is mentally incompetent if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code
§ 1367, subd. (a.).

2) States that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a.).)

3) Requires, when a doubt been declared as to the defendant’s mental competence, the court to hold a trial determine the mental competence of the defendant. (Pen. Code § 1368, subds. (a) & (b.).)

4) Specifies how the trial on the issue of mental competency shall proceed. (Pen. Code § 1369, subs. (a)-(g.).)

5) Provides that in order to determine whether a defendant is IST, the court shall order a trial on the question of the defendant’s mental competence and requires the court to appoint a psychiatrist or licensed psychologist to examine the defendant. If the defendant or defendant’s counsel is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

6) Requires the examining psychiatrists or licensed psychologists to evaluate the nature of the defendant’s mental disorder, if any, the defendant’s ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner, and whether or not treatment with antipsychotic medication is medically appropriate and whether antipsychotic medication is likely to restore the defendant to mental competence. (Pen. Code, § 1369, subd. (a)(2).)

7) Specifies that when county jail inmate is referred for evaluation because of a mental disorder, as specified, the evaluating facility shall transmit a report, which shall be confidential, to the person in charge of the jail or judge of the court concerning the condition of the prisoner. (Pen. Code, §, 4011.6.)

8) States that a "confidential" record is a record that, in court proceedings, is required by statute, rule of court, or other authority except a court order based on the procedure to seal records or rule 8.46 to be closed to inspection by the public or a party. (Cal. Rules of Court, rule 8.45(b).)

9) States that a "sealed" record is a record that by court order is not open to inspection by the public. (Cal. Rules of Court, rule 2.550(b)(5).)

10) Specifies that unless confidentiality is required by law, court records are presumed to be open. Cal. Rules of Court, rule 2.550(c.).

11) Allows a court to order that a record be filed under seal only if it expressly finds facts that establish:

a) There exists an overriding interest that overcomes the right of public access to the record;
b) The overriding interest supports sealing the record

c) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

d) The proposed sealing is narrowly tailored; and

e) No less restrictive means exist to achieve the overriding interest. (Cal. Rules of Court, rule 2.550(d)(1)-(5).)

12) Specifies procedures for unsealing a record and requires any order to unseal a record to state whether the record is unsealed entirely or in part. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both. (Cal. Rules of Court, rule 2.551, subd. (h).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) Author's Statement: According to the author, "If a person is charged with a crime and is suspected of being incompetent to stand trial, written reports prepared by psychiatrists or psychologists are submitted to the court. These reports detail extremely sensitive medical and mental health information about the person, including information about the person's mental health history, current functioning, symptoms of mental illness, current and prior medications, and mental health diagnosis. This confidential information is currently open to the public, since it is contained in a criminal file, which is not confidential.

"Outside of court records, medical and mental health records are normally deemed confidential, under both federal law (the Health Insurance Portability and Accountability Act, or HIPAA) and state law (Civil Code § 56.10).

"SB 557 would make certain court records in criminal competency proceedings presumptively confidential. The records in a particular case could be made public if ordered by a judge. Any member of the public or press would be able to ask a judge to make this order. SB 557 preserves the defendants' privacy interests in protecting highly sensitive medical information, making this consistent with the treatment of medical records in other contexts."

2) Incompetent to Stand Trial (IST): Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. A defendant is mentally incompetent to stand trial "if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367.) Due process requires the court to initiate a determination of competency on its own motion when substantial evidence exists that the defendant is incompetent. People v. Pennington (1967) 66 Cal.2d 508, 518. When substantial evidence of incompetence exists, the trial court cannot proceed with the case against the defendant without first holding a competency hearing. (Id. at 521.) The court must appoint a psychiatrist or licensed psychologist to examine the
defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant’s alleged mental disorder and the defendant’s ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 11369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (People v. Harris (1993) 14 Cal.App.4th 984.) If the court finds a defendant mentally incompetent to stand trial, the person is committed to a state hospital or other (inpatient or outpatient) treatment facility for treatment to regain competency in order to be brought back to court to face the charges against him or her. (Pen. Code, § 1370, subd. (a).) A treatment facility includes a county jail, if the county board of supervisors, the county mental health director, and the county sheriff, concur and make specified findings.

The person statutorily may be committed to the treatment facility for two years or the period equal to the maximum term of imprisonment for the most serious underlying offense with which he or she is charged, whichever is shorter. (Pen. Code, § 1370, subd. (c)(1).) If the treatment facility determines that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future or if the patient has not regained competency after this period, the defendant is returned to the committing court. (Pen. Code, § 1370, subds. (b) & (c).)

3) Sealed Court Records: Court records are presumed to be open to the public. The California Rules of Court provide a method to have court records sealed upon an application by a party to the court. A sealed record is not open to inspection. In order for a court to seal a court record, the court must find an overriding interest that overcomes the right of public access to the record. In addition, the court must ensure that the proposed sealing is narrowly tailored and that no less restrictive means exists to achieve the overriding interest. The California Rules of Court also provide a procedure to unseal a record. When deciding if a record should be unsealed, the court must consider the same factors as it would if it were deciding to seal a record. If the court's order unseals only part of the record or unseals the record only as to certain persons, the order must specify the particular records that are unsealed, the particular persons who may have access to the record, or both.

This bill would create a presumption that court documents related to a defendant’s mental competency in criminal proceedings are confidential and not accessible by the public. The information would be accessible to the district attorney and the defense. The bill would allow petitions to inspect, copy, or utilize the records. The process to unseal a record made confidential by this bill would follow the existing procedure to unseal records as provided by the California Rules of Court.

This bill is intended to make documents containing information concerning the defendant's mental health status confidential. This bill would make confidential all documents submitted to the court related to specified sections of the penal code dealing with the determination of competency. To the extent that documents are submitted to the court by defense counsel, the prosecution, or other parties involved in the competency proceeding that do not contain records or reports of regarding the defendant's mental health status, such documents would also be confidential. Such language might not be narrowly tailored to preserve the
4) **Confidential Court Records:** Some information in a court file regarding a defendant’s mental health status is already confidential and not accessible to the public. If the court or defense counsel has a concern about a defendant’s mental health status, the court or counsel can request that the defendant be evaluated by a mental health professional. The resulting report is returned to the court and included in the court file. That report regarding the defendant’s mental health status is only accessible to the court and the defense counsel. (Pen. Code, § 4011.6.) Probation reports are confidential, except under specified circumstances. (Pen. Code, § 1203.05.)

5) **Argument in Support:** According to the *California Judges Association*, “If a person is charged with a crime and is suspected of being incompetent to stand trial, written reports prepared by psychiatrists or psychologists are submitted to the court. These reports detail extremely sensitive medical and mental health information about the person, including information about the person’s mental health history, current functioning, symptoms of mental illness, current and prior medications, and mental health diagnosis. This confidential information is currently open to the public, since it is contained in a criminal file, which is not confidential. If the court finds the person incompetent to stand trial, many additional records are required to be submitted to the court as part of the treatment process, and those too contain confidential information.

“SB 557 would make certain court records in criminal competency proceedings presumptively confidential. The records in a particular case could be made public if ordered by a judge. SB 557 preserves the defendants’ privacy interests in protecting highly sensitive medical information, making this consistent with the treatment of medical records in other contexts.”

6) **Related Legislation:** AB 1537 (Cunningham), would expand a prosecutor’s ability to request to access, inspect, or use specified juvenile records that have been sealed by the juvenile court 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. AB 1537 is awaiting hearing in the Senate Public Safety Committee.

7) **Prior Legislation:**

a) SB 326 Yee, of the 2011-2012 Legislative Session, would have required the Judicial Council, in consultation with stakeholder groups, and within 18 months of the date of enactment of the bill, to adopt a rule of court to require courts to provide the public with same-day access to case-initiating civil and criminal court records, as defined, at no cost to the requester, for viewing at the courthouse. AB 326 was held on the Assembly Appropriations Suspense File.

b) SB 660 (Speier), Chapter 154, Statutes of 2003, established procedures for keeping the social security numbers of persons involved in specified dissolution matters in the confidential portion of court files.

c) SB 1284 (Morrow), Chapter 102, Statutes of 2004, established procedures for keeping the reports containing psychological evaluations of a child or recommendations regarding
custody of, or visitation with, a child, that are submitted to the court in any proceeding involving child custody or visitation, in the confidential portion of court files.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association (Sponsor)
California Public Defenders Association
County Behavioral Health Directors Association
Judicial Council of California

Opposition

None

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744
SUMMARY: Lowers the penalty to make it a misdemeanor for a person with an outstanding arrest warrant, as specified, to own or possess a firearm. Specifically, this bill:

1) Reduces the penalty from an alternate felony/misdemeanor and makes it a straight misdemeanor for a person with an outstanding warrant for specified serious/violent misdemeanors to own or possess a firearm within 10 years of the conviction.

2) Reduces the penalty from a felony makes it a misdemeanor for a person with an outstanding warrant for felony under the laws of the United States, the State of California, or any other state, government, or country, as specified, to own or possess a firearm.

3) Specifies that the prohibition on possessing a firearm shall not apply to a warrant for a felony under the laws of the United States, the State of California, or any other state, government, or country, unless either of the following is true:

   a) Conviction of a like offense under California law can only result in imposition of felony punishment; or

   b) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than $1,000, or received both punishments.

EXISTING LAW:

1) Provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession of firearms for a period of 10 years after a conviction for specified misdemeanors and that a violation is punishable as a misdemeanor with imprisonment up to one year or as a state prison felony. (Pen. Code, § 29805, subd. (a).)

2) Provides that persons with the knowledge that they have an outstanding warrant for any of the specified serious or violent misdemeanors that result in a 10 year prohibition are guilty of a crime if they possess a firearm while the warrant is outstanding. A violation is punishable as a misdemeanor, with imprisonment up to one year, or as a state prison felony. (Pen. Code, §§ 29805, subd. (a), 29851)

3) Includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, and threats of bodily injury or death. The list includes a
number of other misdemeanor crimes as well. (Penal Code, § 29805, subd. (a).)

4) States that any person who has an outstanding warrant for a felony under the laws of the United States, the State of California, or any other state, government, or country, with knowledge or the warrant, and who possesses any firearm is guilty of a felony with a maximum of three years in the state prison. (Pen. Code, § 29800, subd. (a)(1).)

5) Provides that persons convicted of a felony are prohibited for their lifetimes from owning or possessing a firearm. (Pen. Code, § 29800, subd. (a)(1).)

6) Specifies that a felon in possession of a firearm is guilty of a felony with a maximum of three years in the state prison. (Pen. Code, § 29800, subd. (a)(1).)

7) Prohibits a person from possessing or owning a firearm that is subject to specified restraining orders related to domestic violence and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Pen. Code, § 29825.)

8) Specifies that any person who is convicted, on or after January 1, 2019, of a misdemeanor violation of domestic violence, and who subsequently owns or has possession of a firearm is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year or guilty of a felony punishable by up to three years in the state prison. (Penal Code, § 29805, subd. (b).)

9) Provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is currently known as the Armed Prohibited Persons Systems (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. (Pen. Code, § 30000, et seq.)

10) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500 and 30306; and Welf. & Inst. Code, § 8101.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

1) **Author's Statement:** According to the author, "SB 701 clarifies that the mere issuance of a warrant does not make a felon out of an otherwise lawful gun owner unless the gun owner knows that the warrant exists. Although there is a provision in the statutes to this effect, it is virtually unknown, even by experienced practitioners, because it was enacted through a series of Budget Trailer Bills and a Maintenance of the Codes bill, without ever being reviewed or considered by the Public Safety Committees of either house. SB 701 consolidates the provisions relating to gun ownership by persons against whom warrants are outstanding in the appropriate code sections, so that all can know what the law really is."

2) **Individuals Prohibited from Possessing Firearms in California:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a
lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

3) **California Law Bans Possession of a Firearm by Persons with Specified Active Warrants for Their Arrest:** Under current law, if a person has an outstanding arrest warrant for any felony, or for specified misdemeanors, the person is prohibited from owning or possessing a firearm. Current law requires that the person be aware of the arrest warrant in order to be found criminally liable for possession of a firearm. A person violating the prohibition on the possession of a firearm because of an outstanding arrest warrant for a felony is guilty of a felony. A person violating the prohibition on the possession of a firearm because of an outstanding arrest warrant for a specified misdemeanor is guilty of an alternate felony/misdemeanor.

The provisions of law requiring persons with active warrants for felonies and specified misdemeanors be prohibited from firearm possession were implemented in a budget trailer bill, AB 103 (Committee on Budget), Chapter 17, Statutes of 2017. Initially, there was no requirement that the person who was the subject of the active warrant have any knowledge that they had an arrest warrant. Later in the year, SB 112 (Committee Budget and Fiscal Review), Chapter 363, Statutes of 2017, was signed into law. SB 112 specified that a violation for possession of a firearm when prohibited because of an outstanding warrant, requires a person to have knowledge of the outstanding warrant before the person could be found guilty of a crime.

This bill would make it a misdemeanor when a person with knowledge of an outstanding arrest warrant, as specified, possesses a firearm.

4) **Argument in Support:** According to the *California Public Defenders Association*, "For good reason, current law criminalizes the possession of firearms by defendants convicted of various offenses. However, due to a recent drafting error, the law also criminalizes Californians who were accused but not convicted of those offenses, if a warrant is ever issued for their arrest.

"Thus if a Californian lawfully purchased a firearm twenty years ago (including going through a background check), and in 2019 is late to court and has a warrant issued for their arrest, that Californian automatically becomes a felon under current law, even if the case on which the warrant is based is dismissed or the warrant was issued in error. (See Pen. Code §
29805, subd. (a.)

"In practice, such a rule is nonsensical, unenforceable, and raise constitutional due process issues.

"For example, under current law, all of the following people become felons:

a) A person who legally purchased a firearm, and years later has a warrant issued for any felony, even when the felony is ultimately determined to not have occurred.

b) A defendant who legally purchased a firearm, and years later has a warrant issued and then recalled because he was ten minutes late to court. Ironically, upon recall of the warrant, the defendant is once again permitted to own a firearm, but is now subject to felony prosecution because the warrant was issued in the first place.

c) A defendant who legally purchased a firearm, is accused of various misdemeanors and has a warrant issued, even where it is subsequently determined that the charge against the defendant was unfounded, or that the warrant was issued in error.

"To prevent the criminalization of people who have no knowledge or intent to break the law, SB 701 clarifies the problematic language, while keeping statutory provisions which bar those convicted of qualifying offenses from possessing firearms. As before, courts are still free to order those accused of criminal offenses to surrender their firearms as a condition of release, and defendants are still subject to current bars against the purchase of firearms while a warrant remains outstanding."

5) Related Legislation:

a) SB 120 (Stern), would prohibit a person who is convicted of a misdemeanor violation of carrying a concealed firearm, carrying a loaded firearm, or openly carrying an unloaded handgun, from possessing a firearm for a period of 10 years. SB 120 is awaiting hearing in the Assembly Public Safety Committee.

b) SB 55 (Jackson), would add specified misdemeanor offenses to the list of crimes that result in a 10-year prohibition on owning or possessing a firearm or ammunition, as specified. SB 55 is awaiting hearing in the Assembly Public Safety Committee.

c) SB 172 (Portantino), would add criminal storage offenses to those offenses that can trigger a 10 year firearm prohibition. SB 172 is awaiting hearing in the Assembly Public Safety Committee.

d) AB 276 (Friedman), would prohibit any person convicted of specified firearm safe storage provisions preventing access to children or prohibited persons, on or after January 1, 2020, from possessing a firearm for 10 years. AB 276 is pending in the Assembly Public Safety Committee.
6) Prior Legislation:

a) AB 3129 (Rubio), Chapter 883, Statutes of 2018, prohibits a person who is convicted on or after January 1, 2019, of a misdemeanor domestic violence offense that currently results in a 10-year prohibition against possessing a firearm, from possessing a firearm for life.

b) SB 112 (Committee Budget and Fiscal Review), Chapter 363, Statutes of 2017, specified that a violation for possession of a firearm when prohibited because of an outstanding warrant, requires a person to have knowledge of the outstanding warrant.

c) AB 103 (Committee on Budget), Chapter 17, Statutes of 2017 specified that a person with an outstanding warrant for a felony, or specified misdemeanors, is prohibited from owning or possessing a firearm.

d) AB 785 (Jones-Sawyer), Chapter 784, Statutes of 2017, added two hate crimes to the list of misdemeanors that result in a ban on the right to possess a firearm for 10 years.

e) SB 347 (Jackson), of the 2015-2016 legislative session, would have added specified firearms and ammunition misdemeanor offenses to the list of misdemeanors that result in the defendant being prohibited from possessing a firearm for ten years. SB 347 was vetoed by the governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
California Public Defenders Association

Opposition

None

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