Reentry Council
City & County of San Francisco

AGENDA
Thursday, April 27, 2017
10am-noon
The Women’s Building
3543 18th St.
San Francisco, CA

Note: Each member of the public will be allotted no more than 3 minutes to speak on each item.

1. Call to Order and Introductions.

2. Public Comment on Any Item Listed Below as for “Discussion Only.”

3. Review and Adoption of Meeting Minutes of February 23, 2017 (discussion & possible action).

   a. Staff updates
      a. Mayoral Appointments
      b. Reentry Day at San Francisco Public Library, 5/6/17
      c. Community Grants Training. 5/12/17
   b. Subcommittee updates

5. Regular Update on Legislation and Funding Related to Reentry (discussion and possible action).
   a. Update on 2017 Legislation (see Agenda Item 7)
   b. Update on Funding
   c. Update on MIOCR Grant from Sheriff’s Department

6. Regular Update on Activities of the Juvenile Justice Coordinating Council, Sentencing Commission, Collaborative Courts, and Community Corrections Partnership, Re-Envisioning the Jail Working Group (discussion only).

7. Current state legislation (discussion and action)
   a. AB42/SB10: Bail: pretrial release Approved by City
   b. AB412: Courts: civil assessments Approved by City
   c. AB789: Criminal procedure: release on own recognizance
   d. AB1008: Employment discrimination: prior criminal history
   e. AB1115: Convictions: expungement
   f. SB8: Diversion: mental disorders
   g. SB54: Law enforcement: sharing data Approved by City
   h. SB180: Controlled substances: sentence enhancements: prior convictions
   i. SB185: Crimes: infractions Approved by City
   j. SB222: Inmates: health care enrollment Approved by City
   k. SB393: Arrests: sealing
   l. SB695: Sex offenders: registration: criminal offender record information systems

8. Update on Decision Point Analysis by Criminal Justice Partners (discussion and possible action)
   a. Adult Probation Department
   b. Sheriff’s Department
   c. District Attorney’s Office
   d. Public Defender’s Office
e. San Francisco Police Department

9. Stop the Violence Event in the Tenderloin (discussion only)

10. Council Members’ Comments, Questions, and Requests for Future Agenda Items (discussion only).

11. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.

SUBMITTING WRITTEN PUBLIC COMMENT TO THE REENTRY COUNCIL
Persons who are unable to attend the public meeting may submit to the Reentry Council, by the time the proceedings begin, written comments regarding the subject of the meeting. These comments will be made a part of the official public record, and brought to the attention of the Reentry Council. Written comments should be submitted to: Karen Shain, Reentry Policy Planner, Adult Probation Department, 880 Bryant Street, Room 200, San Francisco, CA 94103, or via email: reentry.council@sfgov.org.

MEETING MATERIALS
Copies of agendas, minutes, and explanatory documents are available through the Reentry Council’s website at http://sfreentry.com or by calling Karen Shain at (415) 553-1047 during normal business hours. The material can be FAXed or mailed to you upon request.

ACCOMMODATIONS
To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in the meeting, please contact Karen Shain at reentry.council@sfgov.org or (415) 553-1047 at least two business days before the meeting.

TRANSLATION
Interpreters for languages other than English are available on request. Sign language interpreters are also available on request. For either accommodation, please contact Karen Shain at reentry.council@sfgov.org or (415) 553-1047 at least two business days before the meeting.

CHEMICAL SENSITIVITIES
To assist the City in its efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library, and on the City's web site at: www.sfgov.org/sunshine.

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Administrator
Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place,
San Francisco, CA 94102-4683.
Telephone: (415) 554-7724
E-Mail: soft@sfgov.org

CELL PHONES
The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Co-Chairs may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

LOBBYIST ORDINANCE
Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by San Francisco Lobbyist Ordinance (SF Campaign and Governmental Conduct Code sections 2.100-2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco CA 94102, telephone (415) 581-2300, FAX (415) 581-2317, and web site http://www.sfgov.org/ethics/
DRAFT MINUTES
Thursday, February 23, 2017
10am-noon

Members Present: Tara Anderson for District Attorney George Gascón (Co-Chair), Adult Probation Chief Karen Fletcher (Co-Chair), Paul Henderson for Mayor Edwin M. Lee (Co-Chair), Sheriff Vicki Hennessy (Co-Chair), Simin Shamji for Public Defender Jeff Adachi (Co-Chair), Board Appointee Jose Bernal, Board Appointee Angela Coleman, Capt. Michael Connolly for Chief William Scott, Mark Culkins (Ex-Officio), San Francisco Board of Supervisor Member Sandra Lee Fewer, Warren Hill for HSA, Mayoral Appointee Leslie Levitas, Board Appointee James Lowden, Jeff Mori of OEWD, Laura Moyé for DCYF, Craig Murdock for DPH, Sheryl Myers for CSS, Juvenile Probation Chief Alan Nance, Rhod Reyes for CDCR Parole.

Members Absent: Mayoral Appointee Omorede Rico Hamilton, Chief US Probation Officer Yador J. Harrell, Board Appointee Kimberly Courtney, HSH Director Jeff Kositsky

1. Call to Order and Introductions.
Probation Chief Karen Fletcher called the meeting to order at 10:05. She welcomed Supervisor Sandra Lee Fewer and Board Appointees Jose Bernal and James Lowden to the Reentry Council. She then asked members to introduce themselves.

2. Public Comment on Any Item Listed Below as for “Discussion Only.”
Chief Fletcher asked for public comment and there was none.

3. Review and Adoption of Meeting Minutes of November 10, 2016
There was a motion and second to approve the minutes of November 10, 2016. Being no public comment, the minutes were approved.

4. Introduction of new members Jose Bernal and James Lowden
Jose Bernal stated that he is a native San Franciscan, having grown up in the Tenderloin. He current works at Hospital House, is formerly incarcerated and wants to bring focus to the privatization of reentry services.

James Lowden was released from prison to a CDCR-run halfway house and was finally released in October 2015. He is currently going to school at San Francisco State College.

5. Staff Report on Activities of the Reentry Council and its Subcommittees
a. Staff updates
Paul Henderson asked Karen Shain to give a Reentry Division staff update. Karen noted that the meeting was being held at the new Bayview Senior Center. If members desire, they may take a tour of the facility following the meeting. Karen then pointed out the new Reentry Council rosters and asked that people review their listing to make sure that their information is accurate. She stated that Adult Probation, in conjunction with Lawyers Committee for Civil Rights and the San Francisco Public Defenders Office will be holding an Expungement Clinic this afternoon at the CASC. Ernest Kirkwood came forward to report on the Community Appreciation Dinner that was held at St. Mary’s Cathedral on February 9th. It was an extremely successful event, He said that over 125 people came to the dinner and many filled out a survey, including contact information. Ernest is reviewing the survey and will then forward to staff for follow up. Ernest and Karen thanked the Reentry Council, particularly DCYF, for support of the event.
b. Subcommittee updates
   
   Update on Subcommittee Retreat. Karen Shain provided an update on the Subcommittee retreat that was held on February 17th. She highlighted a proposal to restructure the subcommittees from three to two subcommittees: Policy and Direct Services. This will provide a chance for the subcommittees to be more unified. She said that the subcommittees identified two central themes for 2017: behavioral health and jail population reduction.

   Following the report, Paul Henderson asked for a motion to reduce the number of subcommittees to two and to ask them to focus their work on behavioral health and jail population reduction. There was a motion and second. Following a call for public comment (there was none), the motion was passed.

6. Regular Update on Legislation and Funding Related to Reentry.
   
   a. Update on 2017 Legislation. Karen Shain stated that 2017 bills have been introduced and there will be a more thorough update at the next Reentry Council meeting.

   b. Update on Funding, including Prop 47 request
   
   Karen Shain noted that both LEAD and Prop 47 requests have been submitted to the BSCC. She asked Craig Murdock to provide an overview of both applications.

   Craig stated that the Prop 47 application was submitted on 2/17/17. He said the request was for $6 million, 96% of which will be for services, particularly to increase San Francisco’s capacity for residential treatment beds. If funded, the grant will be used to increase the capacity by 32 beds plus five detox beds at Harbor Light, run by the Salvation Army. These beds will be used for those reentering from the criminal justice system. Craig stated that DPH expects to hear back on the grant in June 2017. Services will start in July 2017.

   Craig said the LEAD grant will provide early diversion services so that law enforcement can divert people services prior to arrest. He said the application was submitted two weeks ago, and the CASC will act as portal entry to a larger system of care. He said this initiative is designed to mimic the current Seattle LEAD initiative. He said DPH expects to hear back in June 2017. This funding will be for up to $5.9 million with a 10% match.

   Paul Henderson asked where the beds for the Prop 47 grant would be located. Craig stated that Salvation Army will be providing the beds. Sheriff Hennessy noted that Adult Probation, her office and the District Attorney all supported the application.

   Jeff Mori asked whether people who end up in LEAD will be arrested? Craig stated that this is a true diversion program and that people will not be arrested; Chief Fletcher noted that law enforcement will bring people to the CASC.

   Leslie Levitas pointed out that the Reentry Council will serve as the community advisory body for Prop 47.

   Tara Anderson acknowledged the great support of the Reentry Council, noted the importance of this initiative, and thanked DPH for writing the proposal.

   Jose Bernal asked if the LEAD grant would include residential treatment services. Craig stated that the LEAD grant does not include residential treatment, but that participants will be eligible for the increased Prop 47 residential treatment.
c. Update on MIOCR Grant from Sheriff’s Department
Ali Riker provided the following update on the San Francisco Mentally Ill Offender Crime Reduction Grant:

Over the initial 18 months ending in December, 2016, the Court enrolled 53 clients. The program had been enrolling approximately 15 clients a quarter, however for the quarter ending December 31, only 3 clients were enrolled. The greatest challenge over this period has been the intensive needs of the clients, many of whom require residential treatment before accessing the grant funded housing. As clients and their attorneys become frustrated with these waits, they are deciding to opt out of participating, which impacted enrollment numbers over the past quarter. At the last Reentry Council meeting, the Public Defender referred to this challenge and suggested looking for solutions to expedite the waiting process.

SFSD and DPH have been working together closely to develop strategies to reduce custody time for Misdemeanor Behavioral Health Court (MBHC) clients to resolve this issue and have been moving forward on two different fronts. The first immediate strategy is for the Sheriff’s department and its leveraged case managers at NoVA and Pretrial to commit to making prioritized releases and transports of clients, so that if a bed at an Acute Diversion Unit suddenly becomes available, the client would be brought from jail to the program within a matter of hours. This requires a lot of planning by the Court’s treatment team and collaboration with the Sheriff’s Department Custody Division and Jail Behavioral Health Services, which has moved forward, and last Friday an MBHC client was able to transition from jail into treatment utilizing one of these beds. The second strategy would be to divert grant money to DPH to augment staffing at a residential program so they could more easily serve high need forensic clients. This will require budget and contract modifications that can take some time, but I’m hoping to have more to report at the next Reentry Council and I want to acknowledge the DPH for their partnership in these efforts.

Moving from challenges to accomplishments, I wanted to highlight the graduation which happened on December 8th. Eight clients graduated from MBHC court. The average length of stay in the court was 11 months. At graduation, all eight clients had secured permanent housing, including one who had been homeless for the past 15 years. They were all engaged in ongoing mental health treatment, attended the Wellness Recovery Action Plan groups, and remained medication compliant. Two of the clients gained employment while working with the court and one was approved to receive SSI.

Following Ali’s presentation, Allen Nance asked if moving forward, MBHC was seeking funding for capacity or for staffing. Ali stated that the funding is being sought to staff the existing facility. Laura Moyé asked about the age range of MIOCR clients. Ali said she would bring demographic data to the next Reentry Council meeting.

7. Regular Update on Activities of the Juvenile Justice Coordinating Council, Sentencing Commission, Collaborative Courts, and Community Corrections Partnership, Re-Envisioning the Jail Working Group

Allan Nance stated that the Juvenile Justice Coordinating Council last met on 1/24/17. He said its current focus is on the development and approval of a local action plan. He said the Council is determining priorities, working with DCYF, engaging the community. He said the Council held
listening sessions to get feedback on identified priorities. Laura Moyé clarified that the local action plan is no longer required for funding, but they are moving forward with a plan. She said a draft of the plan will be available at the next Juvenile Justice Coordinating Council meeting.

Sheryl Myers announced that the next meeting of the Sentencing Commission will be on 3/1. She noted that their annual report was submitted to the Mayor, and indicated that the full report is available online. Tara Anderson stated that the deadline for reauthorization of the Sentencing Commission is 12/31/17.

Karen Fletcher provided an update on the CCP which met last week. She stated that the next meeting, in August, will focus on how departments allocate funding of state realignment dollars. She said the goal is to make sure that departments are working together and not working in silos, and to make sure that all departments are strategic in budget requests to the Board of Supervisors.

Vicki Hennessy stated that the Reenvision the Jail Working Group is in the process of doing a report for the Board of Supervisors for end of March/early April. She said the report will address current programs and recommendations for each and their relation to the Sequential Intercept Model. She talked about diverting people before jail (pre-booking) and in jail (post-booking), and talked about reentry. She is working with the DA on the rebooking process to try to limit the number jail bed days in this process. She also said she wants to get more dollars for the jail’s pretrial services program, particularly for weekends and night coverage because these times all equate to more jail bed days. Her office is asking the Mayor’s office for more money, they are working with the courts on following the pretrial RA tool, they are considering adding electronic monitoring for more defendants. The Sheriff hopes that participation in the LEAD initiative will result in fewer citations, but says that this will not necessarily result in fewer people coming to jail.

8. Selection of Reentry Council Appointee to the Sentencing Commission

Paul Henderson reminded members that the Reentry Council appoints members to the Sentencing Commission. Joanna Hernandez had been the appointee but has resigned, so the Council is tasked with appointing a new representative to the Sentencing Commission. Over 15 applications were received. Some of those people are here today and will be allowed to speak up to two minutes and they may bring a representative with them who will also be allowed to speak up to two minutes.

Tara Anderson provided information on the role of the Sentencing Commission so the Council members know what they are looking for when voting for a new member. Following her presentation, applicants were asked to come forward to speak.

a. Mae Ackerman-Brimberg is a legal fellow at the Prison Law Office (PLO). She stated that the PLO works to improve conditions of confinement and the Reentry Council and Sentencing Commission work is tied to that work. She stated that the PLO focuses reducing overcrowding and sentencing ties into this. On a personal note, she said she is committed to an interdisciplinary approach to criminal justice issues, her background is with juveniles and reducing racial disparities.

b. Cedric Akbar, Westside Community Services

c. LeRon Barton, Glide Racial Justice Group – sent in statement

d. Denise Coleman, Huckleberry Youth Programs
e. Edward Hatter, Potrero Hill Neighborhood House

f. Eric Henderson works at Ella Baker Center for Human Rights. He is a San Francisco resident and is involved with the Reentry Council subcommittees. He said he has an interest in policy work, bail reform work and sentencing enhancements. He is committed because he’s directly impacted by the issues, has the support of his organization, including support from lawyers at Ella Baker Center. Azadeh Zorabi spoke on Eric’s behalf. She said she is an attorney at Ella Baker Center. She said that Eric has personal and professional experience, helps Ella Baker be more collaborative, and maintains a deep sense of integrity with his work. She noted that he is an ideal candidate for the position and hopes that he is selected.

g. Sia Henry, Prison Law Office – sent in a statement

h. Anna Kelleher, Five Keys Charter Schools (Withdraw)

i. Billie Mizell, Insight Prison Project

j. Masayoshi Mukai, Community Legal Services in East Palo Alto

k. Daisy Ozum, TAYSF

l. Nichole Pettway from the Center on Juvenile and Criminal Justice was out sick today and Maureen Washburn spoke on her behalf. Maureen said that Nichole is the program manager at the Cameo House program, a residential treatment program that helps clients find employment and permanent housing. She said that Nichole is a mentor, she helps and supports clients, and her career has been involved in the criminal justice system and clients.

m. Jordan Rosenberg, New Vision Organization

n. Mario Silano, Five Keys Charter Schools

o. Alexander Weil works at Citywide Forensic, UCSF Dept of Psychiatry. He stated he is a clinical supervisor at Citywide, a native San Francisco resident, and is committed to advocating for those involved in the criminal justice system. He said he went through the criminal justice system and behavioral health system in his 20s, and now has an MA in counseling psychology. His work has a trauma informed focus, and navigation of the criminal justice system is critical. He said he has experience helping people through this system. Simin Shamji spoke on Alex’s behalf and presented a letter of support from Jeff Adachi. Jeff’s letter noted Alex’s strong commitment to the intersection of the criminal justice system and mental health. The letter provided an example of his tireless work with a client who has not reoffended and whose mental health and well-being are now stable and sound.

Following the presentation, Karen Shain noted that some people who were not able to be at the meeting sent in statements and that two people have withdrawn their candidacy. Jeff Mori asked a clarifying question about whether the person will sit on the Reentry Council. It was clarified that this seat is on the Sentencing Commission and not on the Reentry Council. Tara Anderson was
asked to talk about the departments represented on the Sentencing Commission. Tara then listed the departments and involvement of other committees or agencies.

Members took time to review the nominees. Paul Henderson thanked everyone for their applications to the Sentencing Commission seat.

Following discussion by the Council members, it was moved and seconded that Eric Henderson be appointed to the Sentencing Commission. There was no public comment and the motion passed.

Tara Anderson reiterated that she appreciates the interest in the Sentencing Commission.

9. **Update on Racial Disparity Data Analysis**

Tara Agnese gave a brief update on the Racial Disparity Data Analysis. She provided a summary of activities since the last Reentry Council meeting in November. At that meeting Joy Bonaguro from the Mayor’s office gave a report on racial disparity data analysis work.

In December, there was a kick off meeting (12/19/16) for a Race and Ethnicity Working Group (REWG). The working group’s charge is to recommend a standard way of collecting race and ethnicity data across the criminal justice system in San Francisco. Its goals and objectives are to develop a standard and an implementation strategy to migrate to the data standard.

In February the first in-person meeting of the working group (2/1/17) was held. At that meeting the group discussed the purpose, goals, and objectives of the working group, reviewed a draft data collection template which is designed to collect information on what race and ethnicity categories are collected and all of the business processes related to this data. At the in-person meeting Joy identified 3 phases for the work: (1) research and analysis, (2) development of the standard, and (3) development of an implementation strategy. On 2/14/17, the final data collection template was distributed to departments for completion.

March 1, 2017, is the deadline for completing the template. The group will next meet on March 8, 2017.

Tara Anderson noted a concern on the amount of time this has taken and asked for timelines for goals so the process could be streamlined across departments. Tara Anderson asked if a timeline could be presented at the next Reentry Council meeting. Paul Henderson commented that collecting and disseminating the data has been difficult and time consuming.

The next Reentry Council meeting will include an update on the Decision Point analysis from each criminal justice department.

10. **Immigration and Criminal Justice—Presentation by Francisco Ugarte, San Francisco Public Defender’s Office**

Francisco Ugarte described three immigration initiatives coming out of the Trump administration: (1) 10,000 new interior immigration agents to be hired, (2) construction of new detention (likely for profit) facilities, (3) ability to target all for deportation, targets for this are those who are “Criminals,” defined as anyone ever convicted of or arrested for a crime and anyone who participates in unlawful acts whether or not they were arrested or charged. He stated that there is a crisis because most of the time someone does not have an attorney present in immigration court. The San Francisco Public Defender’s office is advocating for more representation at this level.
Francisco noted the intersection of criminal law and immigration law. He referred to PC1016.3, which obligates the District Attorney to consider immigration issues in a plea. The Public Defender’s office is seeking training for District Attorneys on this new law. He also noted that immigration laws don’t have rehabilitation or reentry as part of them so post-conviction relief needs more reform. PC 1203.43 allows for deferred entries to judgment (DEJ) so people can go back and vacate their plea, but this doesn’t help immigrants enough.

Paul Henderson noted the expansion of those targeted for deportation. There are 5-6 million people who could be deported, according to the Trump administration. If that number is accurate it would have to include infractions (like speeding, etc.), so, in fact, we all qualify as “criminals”. Paul said that the Obama administration tried to target only certain offenses, now Trump has expanded this definition to any act that constitutes a criminal offense. According to Paul, there is rule of law for immigrants to gain status and Trump doesn’t focus on this.

Francisco pointed out that there are only 30-50 immigration courts nationwide, so expanding the number of personnel to bring more people into the pipeline does not speed up the process or address the limited number of courts nationwide.

Jeff Mori stated that Trump’s deportation policies are more than impacting people who are here, it impacts anyone coming to this country. Francisco stated that immigration law and deportation proceedings are very complicated, and defendants usually don’t have representation and they are up against skilled state attorneys/immigration attorneys. He said the Public Defender’s office is asking for support on these issues. The representation issue extends to unaccompanied minors. He gave the example of someone going to court to get a restraining order and they were detained based on their immigration status. These holds are unconstitutional if probable cause is not present.

Vicki Hennessy noted that in the last 6 months of 2016 the Sheriff got 41 requests (voluntary requests) from ICE to hold people. Since 1/1/17 she has received 32 requests – so 32 requests in the past 2 months compared to 41 in the 6 months before that.

Members thanked Francisco for his extremely interesting and important presentation.

11. Council Members’ Comments, Questions, and Requests for Future Agenda Items
Jose Bernal thanked Francisco for his presentation and noted there is a lot of intersection between immigration and criminal justice issues. Jose also raised the issue of private corporations like GEO group. He said he believes they are cashing in on reentry services and noted that they have expanded from 111 Taylor St. to a new location to open at 129 6th St. He is concerned that these centers could become immigration detention centers. He also believes that there is an inherent conflict in having private corporations providing reentry services.

There was no further comment.

12. Public Comment on Any Item Listed Above, as well as Items not Listed on the Agenda.
There was none.

13. Adjournment
Paul reminded members that the next meeting will be on April 27th, location to be announced. There was then a motion to adjourn and the meeting was adjourned at 12:10pm.
FREE!

WELCOME EVENT FOR RE-ENTRY @ THE LIBRARY

SATURDAY, MAY 6TH
10AM - NOON

SF MAIN LIBRARY,
5TH FLOOR
100 LARKIN ST.

GET A LIBRARY CARD & CLEAR YOUR RECORD OF ALL FEES

LET'S BUILD COMMUNITY

PRESENTED BY:
SF RE-ENTRY COUNCIL - SFGOV.ORG/REENTRY
THE BRIDGE @ MAIN - (415) 557-4388

FORMERLY INCARCERATED PEOPLE, FAMILIES & FRIENDS ENCOURAGED TO COME!

FREE COFFEE & DONUTS!

EXPLORE THE LIBRARY, TEEN & CHILDREN'S CENTERS!
On February 9, 2017, the Archdiocese of San Francisco Restorative Justice Ministry held a Community Appreciation Dinner recognizing families with incarcerated loved ones and those who are formerly incarcerated. The event was supported by public and community organizations. A survey was conducted to analyze the event’s success and better understand the needs of the community impacted by incarceration. A total of 83 surveys were analyzed.

100% of those who responded felt the event was successful in building community amongst people and families impacted by incarceration
100% would attend a community appreciation dinner again

Top Areas for Event Improvement
- Outreach
- Provide Resource Information
- Expand Time for Networking
- Experience Sharing and Motivational Speaking

Promoting Family Reunification
- Build Systems of Support for Families
- Raise Awareness of Family Impact
- Expand Access to Meaningful In-Custody Visits/Programming
- Support Families to Support Their Loved Ones

Event Take-Away
- Community, Love and Support
- Network and Relationship Building
- Resource Information
- Positive Experience
- Hope

“Mass incarceration has impacted many in the community and coming here tonight has given me hope.”

“Both my sons are incarcerated. They have been in the system for a while… I am here to learn about resources.”

“Our incarcerated loved ones need our support and understanding; knowing that they are loved and not forgotten… They need better access to food, hygiene, phone calls, visits, legal support and hope.”

Supporting Incarcerated Loved Ones
- Family and Community Connection
- General Support (Jobs, Housing, Healthcare)
- Resources & Programs (In-Custody and Upon Release)
- Connections to Faith and Spirituality
- Advocacy

Julio Escobar, Restorative Justice Ministry ● 415-861-9579 ● escobarj@sfoarch.org
Ernest Kirkwood, Support and Opportunities of Reentry Council ● 415-336-3378 ● kirkwoodernest@yahoo.com
Karen Shain, Reentry Division of SFAPD ● 415-553-1047 ● karen.shain@sfgov.org
Icon Sources: www.flaticon.com
<table>
<thead>
<tr>
<th>Grant Name</th>
<th>Funding Agency</th>
<th>Comments</th>
<th>Due Date</th>
<th>Lead Applicants</th>
<th>Eligible or Proposed Activities</th>
<th>Status</th>
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<tbody>
<tr>
<td>Prop 47 Funding</td>
<td>BSCC</td>
<td>Smaller scope: up to $1M for 38 months; Larger scope: Up to $6M for 38 months. Special set-aside for LA County up to $20M</td>
<td>2/21/2017</td>
<td>DPH</td>
<td>Pursuant to Proposition 47, this grant is to provide mental health services, substance use disorder treatment and diversion programs for people in the criminal justice system. The grant program may also provide housing-related assistance and other community-based supportive services, including job skills training, case management and civil legal services. The grants can fund programs that serve adults and/or juveniles. Minimum of 50% shall go to non-governmental community organizations. <a href="http://www.bscc.ca.gov/">http://www.bscc.ca.gov/</a></td>
<td>Submitted</td>
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<td>Justice and Mental Health Collaboration Program</td>
<td>BJA</td>
<td>Category 1: $200K over 24 months; category 3: $300K over 24 months—MIOCR</td>
<td>4/4/2017</td>
<td>SHF</td>
<td>This solicitation specifically seeks to increase early identification and front-end diversion of people with mental health and co-occurring substance use disorders identified at early intercept points within the justice system. This program seeks to increase the number of justice, mental health, and community partnerships; increase evidence-based practices and treatment responses to people with behavioral health disorders in the justice system; and increase the collection of health and justice data to accurately respond to the prevalence of justice-involved people with mental health and co-occurring substance use disorders. Category 1: Collaborative County Approaches to Reducing the Prevalence of Individuals with Mental Disorders in Jail. Category 3: Implementation and Expansion. Expansion grant will be written to expand Citywide’s contract. <a href="https://www.bja.gov/Funding/JMHCP17.pdf">https://www.bja.gov/Funding/JMHCP17.pdf</a></td>
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<td>Smart Policing Initiative</td>
<td>BJA</td>
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<td>1/26/2017</td>
<td>POL</td>
<td>Through SPI, BJA provides resources, training, and technical assistance to enable police agencies to identify and define their most pressing crime problems and institute lasting cultural and organizational changes that foster reliance on and effective use of evidence-based practices, data, and technology to address those problems. Applicants to SPI must enlist a specific individual or team of individuals to serve as the law enforcement agency’s research partner to inform and evaluate their proposed intervention, as well as use the SARA (Scanning, Analysis, Response, and Assessment) model to identify and analyze their selected law enforcement challenge and formulate their response. Since 2009, BJA has awarded SPI grants to 51 law enforcement agencies throughout the United States under national competitive solicitations. These agencies were selected to create a portfolio that is diverse in terms of organizational size, as well as the type of crime problems, or agency challenges they proposed to address. <a href="https://www.bja.gov/funding/SPI17.pdf">https://www.bja.gov/funding/SPI17.pdf</a></td>
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<td>Family Treatment Drug Courts</td>
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<td>$425K/year for up to 5 years</td>
<td>3/3/2017</td>
<td>Court</td>
<td>The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2017 Grants to Expand Substance Abuse Treatment Capacity in Family Treatment Drug Courts [Short Title: Family Treatment Drug Courts (FTDCs)]. The purpose of this program is to expand and/or enhance substance use disorder (SUD) treatment services in existing family treatment drug courts, which use the family treatment drug court model in order to provide alcohol and drug treatment (including recovery support services, screening, assessment, case management, and program coordination) to parents with a SUD and/or co-occurring SUD and mental disorders who have had a dependency petition filed against them or are at risk of such filing. Services must address the needs of the family as a whole and include direct service provision to children (18 and under) of individuals served by this project. Grantees will be expected to provide a coordinated, multi-system approach designed to combine the sanctioning power of treatment drug courts with effective treatment services promoting successful family preservation and reunification. Priority funding should address gaps in the treatment continuum for court involved individuals who need treatment for a SUD and/or co-occurring SUD and mental disorders while simultaneously addressing the needs of their children.</td>
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<td>Adult Drug Court Discretionary Grant Program</td>
<td>BJA</td>
<td>Category 1: $400k over 36 months; Category 2: $400k over 37 months (for housing)</td>
<td>2/28/2017</td>
<td>Court</td>
<td>The overall goal of the Adult Drug Court Discretionary Grant Program (ADCDGP) is to equip courts and community supervision systems with the necessary tools and resources utilizing the most current evidence-based practices and principles to intervene with participants with substance use disorders while preparing them for success in the community. To accomplish this goal, ADCDGP grant funds will be awarded to build and/or expand drug court capacity at the state, local, and tribal levels to reduce crime and substance misuse among high-risk, high-need participants. Category 1: Implementation. Category 2: Enhancement. Enhancement grant written for supportive housing for drug court. <a href="https://www.bja.gov/funding/DrugCourts17.pdf">https://www.bja.gov/funding/DrugCourts17.pdf</a></td>
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<td>Grants for the Benefit of Homeless Individuals</td>
<td>SAMHSA</td>
<td>Up $400k/year, up to 5 years</td>
<td>4/25/2017</td>
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<td>The purpose of this program is to support the development and/or expansion of local implementation of a community infrastructure that integrates behavioral health treatment and services for substance use disorders (SUD) and co-occurring mental and substance use disorders (COD), permanent housing, and other critical services for individuals (including youth) and families experiencing homelessness. <a href="https://www.samhsa.gov/grants/grant-announcements/ti-17-009">https://www.samhsa.gov/grants/grant-announcements/ti-17-009</a></td>
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<td>Smart Pretrial: Competitive Solicitation for Technical Assistance</td>
<td>BJA/Pretrial Justice Institute</td>
<td>TA for period 6/17-9/18</td>
<td>4/21/2017</td>
<td>Pretrial</td>
<td>The Pretrial Justice Institute (PJI) and the Bureau of Justice Assistance (BJA) are partnering to support the implementation of new policies and practices that enhance the quality of the local pretrial justice system through the Smart Pretrial initiative. The goal of this Smart Pretrial Initiative is to provide technical assistance to up to five local jurisdictions in implementing practices consistent with legal and evidence-based pretrial practices. This solicitation offers six technical assistance categories: 1. Containing the Costs of the Criminal Justice System 2. Procedural Justice at First Sight 3. Detention Hearings 4. Minimizing Technical Violations and Re-Admission 5. Enhancing and Ensuring Racial and Ethnic Equality 6. Community Participation in Public Safety. <a href="https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=3c136a30-fb38-36ec-1d6c-e47a976c2358&amp;forceDialog=0">Link</a></td>
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<td>Comprehensive Opioid Abuse Site-based Program</td>
<td>BJA</td>
<td>Category 1: $300k for 36 months. Category 3: $400k over 36 months</td>
<td>4/25/2017</td>
<td></td>
<td>Category 1: Overdose Outreach Projects. Category 3: System-level Diversion and Alternatives to Incarceration Projects. The purpose of the Comprehensive Opioid Abuse Site-based Program is to provide financial and technical assistance to states, units of local government, and Indian tribal governments to plan, develop, and implement comprehensive diversion and alternatives to incarceration programs that expand outreach, treatment, and recovery efforts to individuals impacted by the opioid epidemic who come into contact with justice system. A separate competitive Comprehensive Opioid Abuse Training and Technical Assistance (TTA) solicitation will be posted during the first quarter of FY 2017. The TTA program is designed to complement the site-based competitive solicitation. <a href="https://www.bja.gov/Funding/CARA17.pdf">Link</a></td>
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<td>Court Innovations Grant</td>
<td>California Judicial Council</td>
<td>$318,592 over 3 years</td>
<td>SF Superior Court</td>
<td>Seeking Safety, Moral Reconation Therapy, Interactive Journaling; clinical case manager for those eligible for VA services. Goal is to reduce recidivism and help vets address specific challenges and needs.</td>
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<td>program</td>
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<td>LEAD</td>
<td>BSCC</td>
<td>$5,900,000 with 10% match</td>
<td>2/1/2017</td>
<td>DPH</td>
<td>Law Enforcement Assisted Diversion pilot program to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration. To be modeled after LEAD project in Seattle, WA. Up to</td>
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Page 17
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The San Francisco Collaborative Courts (SFCC) work with individuals and families in the criminal justice, juvenile delinquency, and child welfare systems who are challenged by substance abuse, mental illness and other social welfare concerns. Our programs aim to improve individual and family outcomes, minimize incarceration, reduce criminal recidivism and improve public safety. Judicial leadership plays a significant role in motivating participant compliance. Collaborative Courts adhere to principles that combine the values of treatment and rehabilitation with a focus on accountability and public safety.

**ADULT PROGRAMS**

**Behavioral Health Court** (BHC) addresses the complex needs of mentally ill defendants, including those with co-occurring substance use disorders. An individualized treatment plan is developed which includes psychiatric rehabilitation services, medication management, supportive living, substance abuse treatment, supported employment, and case management services. **Staff: Judge Harry Dorfman, Lisa Lightman**

**Community Justice Center** (CJC) is a Court and Service Center for the Tenderloin, Civic Center, and SOMA neighborhoods. The CJC accesses defendants for substance abuse, mental health, and primary care because staff is available in the same building as the court. Restorative justice projects allow participants to give back to the community. In partnership with the Department of Public Health (DPH), services at the CJC are available for all residents who live in the CJC area. **Staff: Judge Kathleen Kelly, Allyson West**

**Drug Court** (DC) provides an intensive supervision case management program for non-violent offenders with substantial substance abuse problems. When a participant successfully completes Drug Court, generally after 10-24 months, probation is terminated or charges may be dismissed. Drug Court has its own treatment clinic and is supported by state funding through DPH. **Staff: Judge Harry Dorfman, Lisa Lightman**

**Family Treatment Court** (FTC) is a court-supervised treatment and parenting program for families involved in the juvenile dependency system. FTC aims to increase the rate of family reunification, reduce time children spend in foster care, and reduce the rate of re-entry into foster care after reunification. Participating families receive coordinated treatment planning, substance use and mental health treatment, and housing referrals. **Staff: Judge Kathleen Kelly, Jennifer Pasinosky**

**Intensive Supervision Court** (ISC) is a voluntary court-based probation supervision program spearheaded by the Adult Probation Department. The target population is high-risk, high needs probationers who are facing a state prison commitment as a result of probation violations. **Staff: Judge Brendan Conroy**

**Parole Revocation Court** (PRC) is a collaborative team that supports the delivery of social services to up to 10 parolees who have a Petition to Revoke Parole. If a client is unable to fulfill his or her treatment obligations and is not adhering to the treatment plan, the client will be subject to additional remedial sanctions, a possible new parole violation or termination from PRC. **Staff: Judge Tracie Brown, Lisa Lightman**
Veterans Justice Court (VJC) addresses the issues confronting military service veterans: substance abuse, mental health disabilities (including post-traumatic stress disorder), homelessness and unemployment. In partnership with the Veterans Administration, VJC provides treatment, counseling, social service support and academic and vocational skill training. **Staff: Judge Jeff Ross, Allyson West**

**Young Adult Court** (YAC) Young Adult Court works with transitional aged adult youth (ages 18-25) and includes a range of nonviolent and violent cases. Partner agencies include the Superior Court, Office of the District Attorney, Office of the Public Defender, the Department of Public Health, Adult Probation Department, Department of Children, Youth and their Families and FSA/Felton. A state Justice Assistance Grant (JAG) supports the program. **Staff: Judge Bruce Chan, Lisa Lightman**

**SF Collaborative Courts**

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<thead>
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<th>Clients Served 2016*</th>
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<td>Young Adult Court</td>
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<td>Veterans Justice Court</td>
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<td>Drug Court</td>
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<td>Family Treatment Court</td>
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**2603**

**TOTAL**

* April 2017
A California Court for Young Adults Calls on Science

By TIM REQUARTH    APRIL 17, 2017

SAN FRANCISCO — On a cloudy afternoon in the Bayview district, Shaquille, 21, was riding in his sister’s 1991 Acura when another car ran a stop sign, narrowly missing them.

Both cars screeched to a halt, and Shaquille and the other driver got out. “I just wanted to talk,” he recalls.

But the talk became an argument, and the argument ended when Shaquille sent the other driver to the pavement with a left hook. Later that day, he was arrested and charged with felony assault.

He already had a misdemeanor assault conviction — for a fight in a laundromat when he was 19. This time he might land in prison.

Instead, Shaquille — who spoke on condition that his full name not be used, lest his record jeopardize his chances of finding a job — wound up in San Francisco’s Young Adult Court, which offered him an alternative.

For about a year, he would go to the court weekly to check in with Judge Bruce E. Chan. Court administrators would coordinate employment, housing and
education support for him. He would attend weekly therapy sessions and life-skills classes.

In return, he would avoid trial and, on successful completion of the program, the felony charge would be reduced to a misdemeanor. This was important, because a felony record would make it nearly impossible for him to get a job.

“These are transitional-age youth,” said Carole McKindley-Alvarez, who oversees case management for the court. “They’re supposed to make some kind of screwed-up choices. We all did. That’s how you learn.”

Surprisingly, this alternative legal philosophy springs not from concerns about overcrowded prisons or overburdened courts, but from neuroscience.

Researchers have long known that the adolescent brain is continually rewiring itself, making new connections and pruning unnecessary neurons as it matures. Only recently has it become clear that the process stretches well into early adulthood.

Buried in that research is an uncomfortable legal question: If their brains have not fully matured, how responsible are adults ages 18 to 24 for their crimes?

Should they be treated more like adolescents, handled in the comparatively lenient juvenile system, or more like hardened 35-year-olds? Should young adults be held fully responsible for certain crimes but not others?

After attending a lecture at Harvard on brain development, George Gascón, the San Francisco district attorney, decided to tackle these questions head on. In 2015, he and Wendy Still, then the city’s probation chief, established Young Adult Court, a hybrid of the adult and juvenile justice systems tailored to the biology and circumstances of offenders 18 to 24.

Mr. Gascón and his colleagues argue that neurological immaturity may contribute to criminal behavior. Adult sentences constitute cruel and unusual punishment, they say, and undermine the possibility of rehabilitation.

Trained by a clinical psychologist in recent neuroscience, members of the court’s staff are trying to apply the scientific findings to prevent lifelong
entanglement with the criminal justice system.

“It’s an opportunity demographic, is what it is,” Judge Chan said. “This is a really malleable group of people with tremendous capacity to change.”

The Developing Brain

For most of the past century, scientists assumed brains were fully developed by age 18. Then, in 1999, Dr. Jay N. Giedd of the National Institute of Mental Health published a study in Nature Neuroscience that challenged this view.

He used M.R.I. scans to track the brain development of 145 people ages 4 to 22. The study was intended to explore structural changes during the transition from childhood to adolescence, but Dr. Giedd found that neural connections continued to be refined well past age 18.

Over the next decade, other researchers confirmed that the brain seems to undergo a burst of growth and connectivity after age 18, but few experts pursued those observations. In 2012, a comprehensive analysis of brain development omitted data on young adults ages 18 to 21 because so few studies had been done.

But if neuroscientists were not interested in the implications, legal scholars were. A series of Supreme Court rulings — most notably Roper v. Simmons in 2005, which abolished the death penalty for juveniles — was partly based on science suggesting that adolescent brains are not fully developed. This continuing process, the justices reasoned, diminished culpability and justified sentencing that was less harsh.

Laurence Steinberg, a psychologist at Temple University, set out to determine when exactly an adolescent becomes an adult.

Dr. Steinberg gave psychological tasks to 935 people ages 10 to 30 to distinguish between cognitive capacity and “psychosocial maturity.” His team reported that people performed as well as older adults on cognitive tasks — such as recalling 13-digit numbers forward and backward — by age 16.
Yet psychosocial maturity — measured by impulsivity, risk perception, thrill-seeking, resistance to peer influence — did not begin until age 18, gathering momentum through the early 20s.

“It appeared that these two traits might develop on different timelines,” Dr. Steinberg said.

In 2011, the MacArthur Foundation organized a group of legal scholars and scientists, including Dr. Steinberg, to study criminal justice and young-adult brains in more detail. It was no secret that the criminal justice system’s approach to young adults was not working.

Young adults 18 to 24 make up 10 percent of the population, but they account for 28 percent of all arrests (2.1 million in 2015), a rate higher than that of any other age group.

Arrest rates are particularly high among minority males: Nationally, about half of all black men have been arrested by age 23.

Convictions at this age often are the harbingers of derailed lives: 84 percent of young adults released from prison will be rearrested within five years. Few with felony convictions will be able to find jobs.

A court informed by biological research could play a role in bringing down those numbers, Mr. Gascón hopes, even if most of these offenders face considerable economic and racial barriers.

“Science alone can’t solve it, but it can help make for a more equitable justice system,” he said.

New research funded by the MacArthur Foundation’s initiative hints at the developmental challenges of young adults.

In February 2016, Alexandra O. Cohen, a neuroscience graduate student at Weill Cornell Medical College, and other researchers including Dr. Steinberg published one of the initiative’s first papers in Psychological Science, linking brain activity to behavior in young adults in emotionally charged situations.
Some 110 subjects ages 13 to 25 were given a simple task to be performed under one of three conditions: the promise of a $100 reward, the threat of a loud noise, or neither. Brain scan data collected during the task showed that emotional centers of the brain were in overdrive. But there was less activity in areas like the dorsolateral prefrontal cortex, which contributes to self-control.

Ms. Cohen suggests the data mean that young adults are just as capable of restraint as older adults, except when a threat is present.

Her team’s results bolster earlier findings that the brain does not mature all at once. The neural systems governing logical thought, or “cold cognition,” reach adult levels of maturity well before those that manage thinking in the heat of the moment.

The teenage brain has been likened to a speeding car with no brakes. In young adults, on the other hand, “there are brakes, but it’s more like the brakes might not work when the road is bumpy,” Ms. Cohen said.

In a study published in February of this year in Developmental Cognitive Neuroscience, Ms. Cohen and her collaborators used the impulse-control test to predict the “emotional brain age” of individual participants. Later, they assessed each person’s preference for taking risks.

People with a younger “emotional brain age,” regardless of chronological age, tended to prefer riskier behavior. But the variability was highest among young adults.

“If you pick a random 18- to 21-year-old, you have no idea what level of maturity you’re going to get,” said Dr. Steinberg, a co-author of the study. “So in this period with the most variation, why would the law draw a bright line right there?”

Currently, a few states are considering legislation to move that line by trying anyone under age 21 as a juvenile. San Francisco’s experiment in placing young adults into a separate category, neither juvenile nor fully adult, “is a smarter approach, and one that’s more consistent with the science,” Dr. Steinberg said.

The Court in Session
On a recent Tuesday, staff members at the Young Adult Court huddled in a small, windowless courtroom, reviewing cases. Judge Chan sat at the head of the weathered wood table; the prosecutor and public defender, adversaries in the regular court, sat so close they could have read each other’s files.

Along with three case managers and two probation officers, they discussed how one defendant would pay for clothes for a coming job interview, how another might get a ride home from court that day. Judge Chan decided to issue a warrant for a defendant who had missed his court appointments.

A few minutes before court was to begin, the meeting adjourned. The judge put on his robe, and about 40 young adults filed in through the double doors in the back. Most of the defendants were charged with felonies, including robberies and assaults. The court does not accept cases involving serious bodily harm, deadly weapons or gang activity.

Like Shaquille, all were judged to be both high-risk and high-needs offenders from backgrounds that included poverty or homelessness. Most had been in court before.

One by one, they stood before Judge Chan and updated him on their progress with employment, education and therapy.

The judge gave children’s books to a young woman who was about to “graduate” and had recently had a child. He ordered a young man in an orange jumpsuit, newly admitted to the program, back to jail.

As of this February, 45 percent of participants in the court’s first cohort have “graduated,” their charges dropped or reduced. Most of the graduates are on an “aftercare” plan but are not actively followed.

Judge Chan calls that a success. “It’s a broader view of public safety,” he said.

“You get the guy who breaks into the car, and if I incapacitate him for a year, what’s he going to do when he gets out? He’s going to be the same, a little bit older maybe. But he’s going to start breaking into cars again.”
Not everyone is sold on the court’s approach.

“The reality is that the criminal justice system is littered with well-intentioned programs that sound like great ideas but have not been as effective as originally hoped,” said Charles Loeffler, professor of criminology at the University of Pennsylvania.

Until there is more evidence to show the program works, he said, “my attitude is skeptical hope.”

Despite the lack of data, young adult courts are gaining traction. Last year, the federal National Institute of Justice tallied six such courts around the nation, in places as diverse as Idaho, Nebraska and New York.

The Center for Justice Innovation, a British charity, is about to start a pilot program of five young adult courts in England and Wales. Staff members visited the San Francisco and New York courts in February to learn more.

The San Francisco court “is the type of model we would want to see,” said Brent J. Cohen, a former senior policy adviser at the Department of Justice, now managing director of Public Service Consulting Group. “I think it’s probably the first model in the country that really takes into account the neuroscience and does robust training for its staff based on that.”

Shaquille is scheduled to graduate in the next few months. He plans to continue pursuing his ambition to become a licensed security guard — a dream that would evaporate with a felony record.

While he regrets impulsively punching the other driver, he said the court’s therapy classes had helped him with emotional restraint. “When things get overwhelming,” he said, “I can look at things before I react.”

A few months ago, after meeting with a case manager to fill out housing applications, Shaquille heard someone yell a racial epithet at him on a street corner. Shaquille felt the anger well up, but this time he kept walking.

“It ain’t even worth it,” he said.
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A version of this article appears in print on April 18, 2017, on Page D1 of the New York edition with the headline: A Court Calls on Science.

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Agenda Item 8

PARTICIPANT STATUS AS OF March 31 2017

Closed definitions

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OFFENSE CATEGORIES OF GRADUATES

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<td>Jones-Sawyer</td>
<td>Convictions: Expungement</td>
<td>Allows a person who committed a non-non-non felony prior to Realignment to apply for expungement.</td>
<td>Assembly 3rd Reading</td>
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<td>SB8</td>
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<td>Diversion: mental disorders</td>
<td>Authorizes pretrial diversion for people who are charged with committing a misdemeanor or realigned felony offense if offense is due to a mental disorder.</td>
<td>Senate Apps Suspense</td>
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<td>SB180</td>
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<td>Controlled substances:</td>
<td>Sentence enhancements for prior controlled substance convictions would occur only for prior conviction for using a minor in the commission of the offense.</td>
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<td>Arrests: expungement</td>
<td>Provides a clear legal pathway to sealing an arrest record from public view if the arrest did not result in a conviction, removing a serious barrier to employment and housing opportunities.</td>
<td>Senate Appropriations</td>
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<td>SB421</td>
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<td>Sex offenders: registration:</td>
<td>Establishes 3 tiered registry based on criminal offender record information systems conviction.</td>
<td>Senate Appropriations</td>
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April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA  94102

Re: Support for AB 789 (Rubio) - Criminal procedure: release on own recognizance.

Dear Mayor Lee, President Breed, and Members:

The Reentry Council of the City and County of San Francisco is pleased to support AB 789 (Rubio), commonly known as “Own Recognizance/ Pretrial Release.” This piece of legislation gives judges the discretion to approve the release on own recognizance (OR) release for felony arrestees with three prior failures to appear (FTA) if the arrestee is released into a court approved pretrial program.

AB 789 amends section 1319.5, which requires a hearing in open court before an offender arrested for a felony offense who has previously failed to appear in court three or more times over the preceding three years may be granted OR release, but doesn’t require this hearing for other arrestees during non-court hours. This restriction constrains judicial discretion and limits courts’ use of court-approved pretrial release programs.

San Francisco has many innovative, evidence-based pretrial release programs like Neighborhood Court and Collaborative Courts. However, these innovative programs have been hindered by the inflexible requirements of existing law. This bill allows judges the option to grant OR release to felony arrestees with three or more FTAs without a hearing in open court if they are released into a court-approved pretrial release program, and in turn, results in more efficient processing of cases, more appropriate levels of supervision, and a reduction in jail overcrowding.

For these reasons, the Reentry Council supports this bill and urges the City/County Committee on Legislation to support it as well.

Sincerely,

Members of the Reentry Council of the City and County of San Francisco

Encl: Introduced Legislation
Bill Summary
AB 789 facilitates the timely release of arrestees from jail and enhances public safety by providing courts, without holding a hearing in open court, with discretion to approve own recognizance (OR) release for felony arrestees with three prior failures to appear if the arrestee is released into a court approved pretrial program.

Existing Law
Section 1319.5 of the Penal Code requires a hearing in open court before an offender arrested for a felony offense who has previously failed to appear in court three or more times over the preceding three years may be granted OR release.

For other arrestees, a court may grant OR release based on a review of records without having a hearing, which facilitates appropriate release from jail during non-court hours (evenings, weekends, and holidays). In counties where a sizeable portion of those arrested already have multiple Failures to Appear (FTA) due to jail overcrowding and other factors, the restriction in section 1319.5 constrains judicial discretion and limits courts’ efficient use of court-approved pretrial release programs to process releases for appropriate defendants when court is not in session.

Background
Courts are increasingly implementing evidence-based pretrial release programs designed to ensure:

(1) the court’s release decisions are informed by a risk assessment, with recommendations based on county-specific guidelines that establish which defendants are eligible for release; and (2) individuals granted OR release receive appropriate levels of supervision by court-operated or court-approved programs rather than being released without any form of supervision.

State law sets forth statutory requirements for arrestees who receive court-approved OR release and courts have broad authority to impose additional conditions including, when appropriate, drug testing and electronic monitoring.

Some courts include an OR release component that operates during non-court hours. On-call magistrates approve OR releases that allow arrestees to return to their jobs and families, while imposing statutory conditions and appropriate levels of supervision.

However, these innovative programs have been hindered by the inflexible requirements of section 1319.5, which requires a hearing in open court before certain arrestees can be granted OR release.

During non-court hours jail officials may have no option but to release offenders without supervision or court date reminders. Many of those offenders will fail to appear for subsequent court dates, and the dysfunctional cycle of arrest and unsupervised jail release continues.

Details of the Bill
AB 789 amends section 1319.5 to allow judges the option to grant OR release to felony arrestees with three or more FTAs without a hearing in open court if they are released into a court-approved pretrial release program, which results in more efficient processing of cases, more appropriate levels of supervision, and reduction in jail overcrowding.

Support
Judicial Council, Sponsor

Opposition
None

For More Information
Krystal Moreno
Office of Assemblywoman Blanca E. Rubio
State Capitol, Rm. 5175
(916) 319-2048
Krystal.Moreno@asm.ca.gov
An act to amend Section 1319.5 of the Penal Code, relating to criminal law.

LEGISLATIVE COUNSEL’S DIGEST

AB 789, as introduced, Rubio. Criminal procedure: release on own recognizance.

Existing law prohibits the release of any person on his or her own recognizance who is arrested for a new offense and who is currently on felony probation or felony parole or who has failed to appear in court as ordered, resulting in a warrant being issued, 3 or more times over the 3 years preceding the current arrest, and who is arrested for any felony offense or other specified crimes, until a hearing is held in open court before the magistrate or judge.

This bill would allow a court to approve, without a hearing in open court, own recognizance releases under a court-operated or court-approved pretrial release program for arrestees with 3 or more prior failures to appear.


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

1 SECTION 1. Section 1319.5 of the Penal Code is amended to read:
1319.5. (a) No person described in subdivision (b) who is
arrested for a new offense—shall not be released on his or her
own recognizance until a hearing is held in open court before the
magistrate or judge.
(b) Subdivision (a) shall apply to the following:
(1) Any person who is currently on felony probation or felony
parole.
(2) Any person who has failed to appear in court as ordered,
resulting in a warrant being issued, three or more times over the
three years preceding the current arrest, except for infractions
arising from violations of the Vehicle Code, and who is arrested
for any of the following offenses, unless the person is
released under a court-operated or court-approved pretrial release
program:
(A) Any felony offense.
(B) Any violation of the California Street Terrorism
Enforcement and Prevention Act (Chapter 11 (commencing with
Section 186.20) of Title 7 of Part 1).
(C) Any violation of Chapter 9 (commencing with Section 240)
of Title 8 of Part 1 (assault and battery).
(D) A violation of Section 484 (theft).
(E) A violation of Section 459 (burglary).
(F) Any offense in which the defendant is alleged to have been
armed with or to have personally used a firearm.
April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: Support for AB 1008 – Employment Discrimination: Prior Criminal History

Dear Mayor Lee, President Breed, and Members:

The Reentry Council of the City and County of San Francisco is pleased to support AB 1008 (McCarty) Employment Discrimination: Prior Criminal History. In 2013, the California legislature passed historic “Ban the Box” legislation to reduce barriers to employment for individuals with criminal histories. That legislation applied to California public agencies. AB 1008 would expand protections, apply to both public and private employers, and establish a process for applicants to respond to preliminary employment denial based on criminal history.

Similar to San Francisco’s Fair Chance Ordinance, AB 1008 would prohibit employers from asking a job applicant about his or her criminal history until the applicant has received a conditional offer of employment. At such point, an employer may inquire about or consider conviction history. Similar to current EEOC guidance, the employer must make an “individualized assessment” to determine if the conviction history has a “direct and adverse relationship with the specific duties of the job.” Employers that intend to preliminarily deny employment based on the individualized assessment must notify the applicant of the reason(s) in writing. The applicant would have an opportunity to respond within 10 days in order to challenge the accuracy of the information or to provide mitigating or rehabilitation evidence. The employer must consider the information provided in the challenge and, only then, provide written notice of a final decision on the applicant’s employment.

Additionally, if an employer conducts a background check upon making a conditional offer, AB 1008 would prohibit the employer from considering, distributing, or disseminating information regarding an arrest not resulting in conviction; convictions that have been sealed, dismissed, or expunged; an infraction; a misdemeanor older than three years; or a felony older than seven years.

AB 1008 ensures that the roughly seven million Californians, or nearly one in three adults, who have an arrest or conviction record can have a fair chance at obtaining gainful employment while providing employers an opportunity to ensure that the applicant’s conviction history is not at odds with the job requirements. For these reasons, the Reentry Council supports this bill and urges the City/County Committee on Legislation to support it as well.
Sincerely,

Members of the Reentry Council of the City and County of San Francisco

Encl: Introduced Legislation
An act to add Section 12952 to the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as introduced, McCarty. Employment discrimination: prior criminal history.

Existing law, the California Fair Employment and Housing Act, prohibits an employer from engaging in various defined forms of discriminatory employment practices.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or postural diversion program, except as specified.

This bill would provide it is an unlawful employment practice for an employer to include on any application for employment any question that seeks the disclosure of an applicant’s criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior criminal convictions, except as provided.
This bill would also require an employer who intends to deny an application a position of employment solely or in part because of the applicant's prior conviction of a crime to make an individualized assessment of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment. The bill would require that, if an employer makes a preliminary determination based on that individualized assessment to deny the applicant employment, the employer must notify the applicant of the reasons for that preliminary decision. The bill would authorize an applicant to respond to that notification within 10 days with information that challenges the accuracy of the information in the notification or that includes specified mitigation or rehabilitation evidence. The bill would require an employer to consider information submitted by the applicant before making a final decision. The bill would require an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of specified topics.


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

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

(a) In 2013, the State of California passed historic legislation to reduce barriers to employment for people with conviction histories, and to decrease unemployment in communities with concentrated numbers of people with conviction histories, recognizing that these barriers are matters of statewide concern. The Ban the Box law passed in 2013 applied to state agencies, all cities and counties, including charter cities and charter counties, and special districts.

(b) In 2015, President Obama directed all federal agencies to “Ban the Box” and refrain from asking applicants about their convictions on the initial job application.

(c) Nationwide, 24 states and over 150 cities and counties have adopted a “Ban the Box” law, and over 300 companies have signed the White House Fair Chance hiring pledge.

(d) Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover
both public and private sector employers. Over 20 percent of the
United States population now lives in a state or locality that
prohibits private employers from inquiring into an applicant’s
record at the start of the hiring process.
(e) Since 2013, when Assembly Bill 218 was signed into law,
five states have adopted fair chance hiring laws that cover private
employers, Connecticut, Illinois, New Jersey, Oregon, and
Vermont, as well as several major cities, including Baltimore, New
York City, Philadelphia, and Austin, Texas.
(f) Roughly seven million Californians, or nearly one in three
adults, have an arrest or conviction record that can significantly
undermine their efforts to obtain gainful employment.
(g) Experts have found that employment is essential to helping
formerly incarcerated people support themselves and their families,
that a job develops prosocial behavior, strengthens community
ties, enhances self-esteem, and improves mental health, all of which
reduce recidivism. These effects are strengthened the longer the
person holds the job, and especially when it pays more than
minimum wage.
(h) Experts have found that people with criminal records have
lower rates of turnover and higher rates of promotion on the job
and that the personal contact with potential employees can reduce
the negative stigma of a conviction by approximately 15 percent.
SEC. 2. Section 12952 is added to the Government Code, to
read:
12952. (a) Except as provided in subdivision (b), it is an
unlawful employment practice for an employer to do any of the
following:
(1) To include on any application for employment any question
that seeks the disclosure of an applicant’s criminal history.
(2) To inquire into or consider the conviction history of the
applicant, including any inquiry about conviction history on any
employment application, until after the applicant has received a
conditional offer.
(3) In conducting a conviction history background check in
connection with any application for employment, to consider,
distribute, or disseminate information on any of the following:
(A) Arrest not followed by conviction.
(B) Referral to or participation in a pretrial or posttrial diversion
program.
(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.

(D) Misdemeanor convictions for which no jail sentence can be imposed, or infractions.

(E) Misdemeanor convictions for which three years have passed since the date of conviction or felony convictions for which seven years have passed since the date of conviction.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not apply to a position for which a state or local agency is otherwise required by law to conduct a conviction history background check, or to any position within a criminal justice agency, as that term is defined in Section 13101 of the Penal Code.

(c) This section shall not be construed to prevent a state or local agency from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(d) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant’s prior conviction of a crime must make an individualized assessment of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall at least consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) In making the individualized assessment described in this paragraph, the employer shall be consistent with the Equal Employment Opportunity Commission’s Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (April 2012) and the regulations of the Department.

(2) If the employer makes a preliminary decision that the applicant’s conviction history disqualifies him or her from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification shall contain all of the following:
(A) Identify the conviction item that is the basis for the potential denial or disqualification.
(B) Provide a copy of the conviction history report, if any.
(C) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide.
(D) Provide notice of the applicant’s right to respond as described in this section, and time limit to respond.

(3) The applicant shall have at least 10 business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. That response may include information that challenges the accuracy of any information provided in the notice, or the submission of mitigation or rehabilitation evidence, or both. Evidence of mitigation or rehabilitation may be established by any of the following:

(A) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime.
(B) Evidence showing compliance with terms and conditions of probation or parole.
(C) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision. Consistent with the standards set forth in subdivision (b), the employer shall not disqualify an applicant from the employment if the applicant showed evidence of mitigation or rehabilitation.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant’s prior conviction of a crime, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification.
(B) Any existing procedure the employer has to challenge the decision or request reconsideration.
(C) Whether the applicant may be eligible for other employment or occupation with the employer.
(D) The earliest date the applicant may reapply for a position of employment.
(E) The right to file a compliant with the department.
(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.
In 2013, California enacted historic “ban the box” legislation (AB 218) applicable to state agencies as well as all cities and counties. Recognizing that limited access to employment opportunities by people with conviction records is a matter of statewide concern, the legislature delayed inquiries into job applicant conviction histories until later in the hiring process in order to reduce barriers to public-sector employment for people with conviction histories and thus decrease unemployment in communities with concentrated numbers of people with conviction histories.

The “ban the box” movement has now been embraced by 25 states and over 150 localities throughout the nation. In addition, over 300 companies signed the White House Fair Chance Business Pledge last year. In 2015, President Obama also directed all federal agencies to refrain from asking applicants about their convictions on the initial job application.

Since 2013, when AB 218 was enacted, states and cities across the U.S. have expanded their fair-chance laws to cover both public- and private-sector employers. Today, nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair-chance hiring laws applicable to both sectors. Often these laws have generated strong bi-partisan support, as in the case of the New Jersey law that was signed by Republican Governor Chris Christie in 2014. As a result of state and local actions, over 20 percent of the United States population now lives in a state or locality where private employers are prohibited from inquiring into an applicant’s record at the start of the hiring process.

In addition to this mainstream movement for fair chance hiring, in 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued updated guidelines making clear that background checks have a significant “disparate impact” on people of color and clarifying the standards that employer screening practices should satisfy in order to comply with federal antidiscrimination law. The EEOC also expressly endorsed “ban the box” as a best practice for all employers to follow. Similarly, in California, the Fair Employment and Housing Council (FEHC) issued regulations modeled on the EEOC guidance in order to clarify the standards that apply to ensure that criminal background checks do not discriminate against people of color.

The need for these laws is great. Roughly eight million Californians—nearly one in three adults—have an arrest or conviction record. Increased access to employment for people with conviction histories is essential to helping formerly incarcerated people support themselves and their families, strengthening communities and boosting the economy, and reducing recidivism. The evidence is also clear that ban-the-box laws contribute to a marked increase in hiring of people with records. One multi-year study observed that an employed person with a conviction history had a 16% recidivism rate compared to a 52.3% recidivism rate by those lacking employment. The timing of an employer inquiry into conviction history is crucial: personal contact can reduce the negative stigma of a conviction and increase a person’s likelihood of being viewed as more than just his or her record and ultimately hired. Tailoring hiring
practices to reduce such stigma and offer workers with records a fair shot at employment is crucial for building healthy workplaces and communities.

**SOLUTION**
AB 1008 provides that it is an unlawful employment practice for an employer to include on any application for employment any question that seeks the disclosure of an applicant’s conviction history; to inquire into or consider the conviction history of an applicant until after the applicant has received a conditional offer; and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior convictions, except where certain state laws require a background check, as in the case of law enforcement positions. Consistent with the 2012 EEOC guidance and the FEHC regulations, the bill also requires an employer who intends to deny an applicant a position to make an individualized assessment of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment.

**SUPPORT**
Co-sponsors: All of Us or None, National Employment Law Project, Legal Services for Prisoners with Children,
April 27, 2017

Mayor Edwin Lee  
City of San Francisco  
Hon. London Breed, President  
Members, San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Re: Assembly Bill 1115 -- SUPPORT

Dear Mayor Lee, President, and Members:

The Reentry Council of the City and County of San Francisco is pleased to urge your support for California Assembly Bill 1115, which would authorize a court, in its discretion, to grant expungement relief to a petitioner previously convicted of an offense included in AB 109 (2011).

For many individuals convicted of a crime, there are consequences that continue beyond their incarceration or probation. The permanency of a criminal record can make it difficult for rehabilitated individuals to obtain a decent paying job, qualify for secure and safe housing or pursue their educational goals. This is because many employers, landlords and other entities often exclude individuals that have a prior criminal conviction. There are actually over 4,000 different ways in which a criminal record operates as a barrier for those who have had a felony conviction in California today. These barriers have been shown to statistically increase the likelihood of recidivism when people trying to survive cannot pursue lawful means for reintegrating into society.

In 2011, Governor Brown signed into law Criminal Justice Realignment legislation (“Realignment”). Realignment allows individuals convicted of certain crimes and who do not have a disqualifying prior conviction to serve their sentence in a county jail or under local community supervision rather than in state prison.

In 2014, Governor Brown signed into law Assembly Bill 651 which allows individuals convicted of a Realignment Offense and sentenced to local custody to petition for expungement of that criminal conviction. Since California’s expungement laws predate Realignment, those sentenced under the new Realignment structure were not eligible for expungement. Thus, AB 651 was a means to bridge this gap creating a pathway for expungement for those convicted and sentenced under Realignment.
AB 1115 seeks to close another gap within Californian expungement law. While individuals convicted of a Realignment Offense after Realignment are eligible for expungement, those convicted of the same offenses prior to Realignment cannot currently receive that relief. AB 1115 will make Realignment convictions predating Realignment eligible for expungement under judicial discretion. Providing this remedy will increase housing, employment and educational opportunities for people with older criminal records while ensuring that courts still have the discretion necessary to determine eligibility.

San Francisco has long advocated for the reentry rights of people getting out of prison and jail through the establishment of the Reentry Council as well as the Fair Chance Ordinance and other measures calling for non-discrimination against people with criminal records. AB 1115 closes an important gap for people who would have qualified for Realignment if their convictions had occurred after Realignment went into effect.

For these reasons, we support AB 1115 and urge the City to do so as well.

Sincerely,

Members of the Reentry Council of the City and County of San Francisco

Encl: Introduced Legislation
AB 1115: Reducing Recidivism Through Expungement Relief

Summary:
AB 1115 authorizes a court, in its discretion, to grant expungement relief for a petitioner previously convicted of an offense included in AB 109 (2011), public safety Realignment.

Background:
In 2011, Governor Jerry Brown signed Assembly Bill 109, also referred to as “Realignment.” Under Realignment, offenders are authorized to serve their sentences in county jails and/or under local community supervision rather than state prison if they meet the following criteria: 1) they were sentenced for certain non-serious, non-violent, non-sexual crimes; 2) they have no prior serious or violent criminal convictions; and 3) they are not registered sex offenders. Realignment has been the cornerstone of California’s solution to reducing state costs, high rates of recidivism, and most notably, the extreme overcrowding within our prison system.

Prior to the passage of AB 109, more than 60,000 people with a felony record cycled in and out of our state prisons annually, with a 90-day average length of stay for violations of parole. Within the first two years following Realignment, the population of those with a felony on their record and who violated their parole dropped from 13,285 to 25, as most parole violators now serve their time in county jail. While this placed burdens on local jurisdictions, public safety has not been compromised, nor has there been a disruption in the permanent funding allocated to counties for the ongoing implementation of AB 109.

In fact, one of the impacts we have seen following the inception of AB 109 is that recidivism rates have continued to decline. Since 2011, recidivism dropped from 67 percent to 44 percent, inclusive of those who have been re-incarcerated locally as a result of Realignment. Furthermore, both the severe overcrowding in our prisons and the costs associated with high rates of incarceration have also significantly diminished.

Need for legislation:
Where there are barriers to housing, employment, education and other opportunities for economic stability, the likelihood of recidivism increases. It is therefore necessary to create pathways for individuals to expunge old criminal convictions after all terms of punishment have been met.

In 2013, AB 651 was signed into law authorizing a court, in its discretion and in the interests of justice, to grant expungement relief for individuals convicted of a Realignment offense. AB 651 established a process of expungement for these individuals after successful completion of supervision, full payment of restitution, and the individual has demonstrated a commitment to reentry.

Although AB 651 has helped ease some of the challenges and barriers to housing, employment, education and overall reintegration, there are still
those who, prior to Realignment, are ineligible to clean-up their records.

AB 1115 will address this concern by allowing a court to determine whether an individual convicted of a Realignment offense, prior to 2011 and who would have fallen under Realignment, should be granted expungement relief. Ultimately, this bill will help further reduce recidivism, building upon statewide efforts to assist those who have served their time and proven their willingness to be productive, contributing, law-abiding members of society.

This bill:

Specifically, AB 1115 will authorize a court, in its discretion and in the interests of justice, to grant expungement relief for a petitioner previously convicted of an offense enumerated in Penal Code Section 1170 (h), if specified conditions are satisfied.

- Applies to petitioners seeking expungement relief for a prior conviction for a non-serious, non-violent, or non-sexual offense for which he or she was sentenced prior to enactment of Realignment
- Provides that the court, may grant the expungement relief only after the lapse of one year following the petitioner's completion of the sentence, provided that the petitioner is not under local or state supervision or is not serving a sentence for, on probation for, or charged with the commission of any offense.
- Provides that in any subsequent prosecution of the petitioner for any offense, a conviction dismissed pursuant to the relief provided by this bill shall have the same effect as if it had not been dismissed.
- Provides that a conviction dismissed by the relief provided by this bill does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for any state or local license, or for contracting with the California State Lottery Commission.
- Provides that the expungement relief of a conviction does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction for such ownership or possession.
- Provides that the expungement relief does not permit a person prohibited from holding public office as a result of the dismissed conviction to hold public office.
- Prevents the court from granting the expungement relief unless the prosecuting attorney has been given 15 days' notice of the petition.

Support:

- Californians for Safety and Justice (Sponsor)
- American Civil Liberties Union
- California Attorneys for Criminal Justice
- California Catholic Conference
- California Public Defenders Association
- Center on Juvenile and Criminal Justice
- Contra Costa County Defenders Association
- Further The Work
- Human Impact Partners
- Los Angeles Regional Reentry Partnership
- Reentry Solutions Group
- Rubicon Programs
- Social Justice Learning Institute

Contact:

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John Bauters
Director of Government Relations
Californians for Safety and Justice
(415) 999-7932
john@safeandjust.org
An act to add Section 1203.42 to the Penal Code, relating to convictions.

LEGISLATIVE COUNSEL’S DIGEST

AB 1115, as introduced, Jones-Sawyer. Convictions: expungement. Existing law authorizes a court to allow a defendant sentenced to county jail for a felony to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, after the lapse of one or 2 years following the defendant’s completion of the sentence, as specified, provided that the defendant is not under supervision as specified, and is not serving a sentence for, on probation for, or charged with the commission of any offense. Existing law requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she was convicted, except as specified.

This bill would allow a defendant sentenced to state prison for a felony that, if committed after the 2011 Realignment Legislation, would have been eligible for sentencing to a county jail to obtain the above-specified relief.


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

1 SECTION 1. Section 1203.42 is added to the Penal Code, to read:
1203.42. (a) If a defendant was sentenced prior to the
implementation of the 2011 Realignment Legislation for a crime
for which he or she would otherwise have been eligible for
sentencing pursuant to subdivision (h) of Section 1170, the court,
in its discretion and in the interests of justice, may order the
following relief, subject to the conditions of subdivision (b):

1. The court may permit the defendant to withdraw his or her
plea of guilty or plea of nolo contendere and enter a plea of not
guilty, or, if he or she has been convicted after a plea of not guilty,
the court shall set aside the verdict of guilty, and, in either case,
the court shall thereupon dismiss the accusations or information
against the defendant and he or she shall thereafter be released
from all penalties and disabilities resulting from the offense of
which he or she has been convicted, except as provided in Section
13555 of the Vehicle Code.

2. The relief available under this section may be granted only
after the lapse of two years following the defendant’s completion
of the sentence.

3. The relief available under this section may be granted only
if the defendant is not under supervised release, and is not serving
a sentence for, on probation for, or charged with the commission
of any offense.

4. The defendant may make the application and change of plea
in person or by attorney, or by a probation officer authorized in
writing.

(b) Relief granted pursuant to subdivision (a) is subject to the
following conditions:

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

2. The order shall state, and the defendant shall be informed,
that the order does not relieve him or her of the obligation to
disclose the conviction in response to any direct question contained
in any questionnaire or application for public office, for licensure
by any state or local agency, or for contracting with the California
State Lottery Commission.

3. Dismissal of an accusation or information pursuant to this
section does not permit a person to own, possess, or have in his or
her custody or control any firearm or prevent his or her conviction
under Chapter 2 (commencing with Section 29800) of Division 9
of Title 4 of Part 6.

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

(c) A person who petitions for a change of plea or setting aside
of a verdict under this section may be required to reimburse the
court for the actual costs of services rendered, whether or not the
petition is granted and the records are sealed or expunged, at a rate
to be determined by the court not to exceed one hundred fifty
dollars ($150), and to reimburse the county for the actual costs of
services rendered, whether or not the petition is granted and the
records are sealed or expunged, at a rate to be determined by the
county board of supervisors not to exceed one hundred fifty dollars
($150), and to reimburse any city for the actual costs of services
rendered, whether or not the petition is granted and the records are
sealed or expunged, at a rate to be determined by the city council
not to exceed one hundred fifty dollars ($150). Ability to make
this reimbursement shall be determined by the court using the
standards set forth in paragraph (2) of subdivision (g) of Section
987.8 and shall not be a prerequisite to a person’s eligibility under
this section. The court may order reimbursement in any case in
which the petitioner appears to have the ability to pay, without
undue hardship, all or any portion of the costs for services
established pursuant to this subdivision.

(d) (1) Relief shall not be granted under this section unless the
prosecuting attorney has been given 15 days’ notice of the petition
for relief. The probation officer shall notify the prosecuting attorney
when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has
received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the
prosecuting attorney fails to appear and object to a petition for
dismissal, the prosecuting attorney may not move to set aside or
otherwise appeal the grant of that petition.
April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

RE: Support for SB 393 (Lara) – Sealing of Arrests

Dear Mayor Lee, President Breed, and Members:

The Reentry Council of the City and County of San Francisco is pleased to support Senate Bill 393 (Lara), a bill that will provide a clear legal pathway to sealing an arrest record from public view if the arrest did not result in a conviction, removing a serious barrier to employment and housing opportunities.

Current law restricts the use of arrest records by employers, landlords and others. However, many people still find themselves trapped in a “paper prison” in which they are denied jobs and housing due to an arrest record that did not result in a conviction. These arrests are not only accessible by government agencies, but are often used by private companies. With the rapid technological advancements of the 21st century, government information is now more public than ever and often compiled into databases by consumer reporting agencies. This makes it easier for employers, landlords, and others to base decisions on an arrest rather than a conviction.

Current record sealing procedures are ineffective and do not provide a mechanism to properly seal arrests from people’s records. Some penal code sections provide for the sealing of local records, but do not affect state-level records, which are usually referenced in background checks. Records used for background checks can be outdated. Consumer reporting companies fail to update their databases to reflect court-ordered record sealing, which means that individuals are deprived of the very benefit that the court order is intended to provide.

The Reentry Council believes SB 393 will establish a uniform legal process for sealing records relating to arrests that did not result in a conviction. This measure will also update criminal records at the California Department of Justice, by doing so consumer reporting agencies will provide updated background reports.
Thank you for introducing this important legislation. If you should have any questions or concerns, please feel free to contact our organization at karen.shain@sfgov.org.

Sincerely,

Members of the Reentry Council of the City and County of San Francisco

Encl: Introduced Legislation
Sealing of Arrests
Senate Bill 393

Summary:
SB 393 will provide a clear legal pathway to sealing an arrest record from public view if the arrest did not result in a conviction, removing a serious barrier to employment and housing opportunities.

Background:
Current law restricts the use of arrest records by employers, landlords and others. However, many people still find themselves trapped in a “paper prison” in which they are denied jobs and housing due to an arrest record that did not result in a conviction. These arrests are not only accessible by government agencies, but are often used by private companies. With the rapid technological advancements of the 21st century, government information is now more public than ever and often compiled into databases by consumer reporting agencies. This makes it easier for employers, landlords, and others to base decisions on an arrest record rather than a conviction.

Although California has a comprehensive statutory process to expunge convictions, it has inconsistent standards for sealing arrest records for individuals not convicted. Many individuals who are arrested are never charged, sometimes their cases are charged but later dismissed, or an individual can even take their case to trial and be acquitted by a jury. In each of these examples the record of arrest is still available publicly despite the fact that the individual was never convicted of a crime.

Arrest records that are not sealed can be costly and life-changing. The FBI reports that it has over 77 million individuals on file in their criminal master database, which translates to 1 in 3 adults. Furthermore, studies have found that around 40% of men and 20% of women were likely to be arrested before the age of 23, yet 47% were never convicted. A snapshot of felony filings in the 75 largest U.S. counties, for example, showed that approximately one-third of felony arrests did not lead to conviction. African Americans make-up less than 14 percent of the population, but making up 28 percent of all arrests, the impact of unsealed arrest record is disproportionately impacting communities of color.

According to a 2012 study conducted by the Society for Human Resource Management, 69% of reported organizations used criminal background checks on all job candidates and only 58% allow candidates to explain negative results. Many prospective employees and housing applicants are rejected solely based on having an arrest record on file. Studies also show people with unsealed arrest records have a substantially increased chance of living in poverty, earning lower wages, with fewer educational opportunities.

Problem:
Current record sealing procedures are ineffective and do not provide a mechanism to properly seal arrests from people’s records. Some penal code sections provide for the sealing of local records, but do not affect state-level records, which are usually referenced in background checks. Records used for background checks can be outdated. Consumer reporting companies fail to update their databases to reflect court-ordered record sealing, which means that individuals are deprived of the very benefit that the court order is intended to provide.

Solution:
SB 393 will:
- Establish a uniform legal process for sealing records relating to arrests that did not result in a conviction.
- Update criminal records at the California Department of Justice, by doing so consumer reporting agencies will provide updated background reports.

By removing records of arrest for those who were never convicted of a crime, we can remove barriers that are holding back Californians from employment and housing opportunities.

Contact:
Daisy Luna | Daisy.Luna@sen.ca.gov | 916-651-4033
SENATE BILL No. 393

Introduced by Senators Lara and Mitchell

February 15, 2017

An act to amend Section 1786.18 of the Civil Code, and to amend Sections 851.87, 851.90, 1000.4, and 1001.9 of, and to add Sections 851.91 and 851.92 to, the Penal Code, relating to arrests.

LEGISLATIVE COUNSEL’S DIGEST

SB 393, as amended, Lara. Arrests: sealing.

Existing law authorizes a person who was arrested and has successfully completed a prefiling diversion program, a person who has successfully completed a specified drug diversion program, and a person who has successfully completed a specified deferred entry of judgment program to petition the court to seal his or her arrest records. Existing law also specifies that, with regards to arrests that resulted in the defendant participating in certain other deferred entry of judgment programs, the arrest upon which the judgment was deferred shall be deemed not to have occurred.

This bill would also authorize a person who has suffered an arrest that did not result in a conviction to petition the court to have his or her arrest sealed. Under the bill, a person would be ineligible for this relief under specified circumstances, including if he or she may still be charged with any offense upon which the arrest was based or if any of the arrest charges or charges in the accusatory pleading based on the arrest, if filed, is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charge.
The bill would provide that a person who is eligible to have his or her arrest sealed is entitled, as a matter of right, to that sealing unless the person has been charged with certain crimes, including, among others: an offense or charge based on physical violence by the petitioner against another person; domestic violence if the petitioner’s record demonstrates a pattern of domestic violence arrests, convictions, or both, in which case the person may obtain sealing of his or her arrest only upon a showing that the sealing would serve the interests of justice. The bill would specify that the petitioner has the initial burden of proof to show that he or she is either entitled to have his or her arrest sealed as a matter of right or that sealing would serve the interests of justice and, if the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to respondent prosecuting attorney.

The bill would require, if the petition is granted, the court to issue a written ruling and order that, among other things, states that the arrest is deemed not to have occurred and that, except as otherwise provided, the petitioner is released from all penalties and disabilities resulting from the arrest. The bill would prohibit, if an arrest is sealed pursuant to the above provisions or pursuant to the specified provisions of existing law that authorize the sealing of arrest records after successfully completing a prefile diversion program, a specified drug diversion program, or a specified deferred entry of judgment program, or if an arrest is deemed to have never occurred after a defendant participates in certain other deferred entry of judgment programs, the disclosure of the arrest, or information about the arrest that is contained in other records, from being disclosed to the public, consumer reporting agencies, or any other person or entity, except as specified.

The bill would subject a person to a civil penalty if he or she disseminates information relating to a sealed arrest unless he or she is specifically authorized to disseminate that information. Because this bill would impose new duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.
The people of the State of California do enact as follows:

SECTION 1. Section 1786.18 of the Civil Code is amended to read:

1786.18. (a) Except as authorized under subdivision (b), an investigative consumer reporting agency may not make or furnish any investigative consumer report containing any of the following items of information:

(1) Bankruptcies that, from the date of the order for relief, antedate the report by more than 10 years.

(2) Suits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than seven years.

(3) Unsatisfied judgments that, from the date of entry, antedate the report by more than seven years.

(4) Unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement.

(5) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(6) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that records of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

(8) Records of any arrest that did not result in an indictment, information, or misdemeanor complaint.

(9) Any other adverse information that antedates the report by more than seven years.
(b) The provisions of subdivision (a) are not applicable in either of the following circumstances:

1. If the investigative consumer report is to be used in the underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of two hundred fifty thousand dollars ($250,000) or more.

2. If the investigative consumer report is to be used by an employer who is explicitly required by a governmental regulatory agency to check for records that are prohibited by subdivision (a) when the employer is reviewing a consumer's qualification for employment.

(c) Except as otherwise provided in Section 1786.28, an investigative consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy and completeness of the information during the 30-day period ending on the date on which the report is furnished. In the case of information relating to an arrest, the duty to verify the accuracy and completeness of the information includes the duty to inquire with either the trial court in each county or the Department of Justice on a weekly basis to determine which, if any, arrests have been sealed, as described in paragraph (4) of subdivision (b) of Section 851.92 of the Penal Code.

(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.

SEC. 2. Section 851.87 of the Penal Code is amended to read:
851.87. (a) (1) In any case where a person is arrested and successfully completes a prefiling diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records pertaining to an arrest and the court may order those records sealed as described in Section 851.92 if the court finds that doing so will be in furtherance of justice. 851.92. A copy of the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense, who may request a hearing within 60 days of receipt of the petition. The court may hear the matter no less than 60 days from the date the law enforcement agency and the prosecuting attorney receive a copy of the petition. The prosecuting attorney and the law enforcement agency, through the prosecuting attorney, may present evidence to the court at the hearing.

(2) If the order is made, the court shall give a copy of the order to the person and inform the person that he or she may thereafter state that he or she was not arrested for the charge.

(3) The person may, except as specified in subdivisions (b) and (c), indicate in response to any question concerning the person’s prior criminal record that the person was not arrested.

(4) Subject to subdivisions (b) and (c), a record pertaining to the arrest shall not, without the person’s permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(b) The person shall be advised that, regardless of the person’s successful completion of the program, the arrest shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the person of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The person shall be advised that an order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency’s ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.
As used in this section, “prefiling diversion” is a diversion from prosecution that is offered to a person by the prosecuting attorney in lieu of, or prior to, the filing of an accusatory pleading in court as set forth in Section 950.

SEC. 3. Section 851.90 of the Penal Code is amended to read:

851.90. (a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000 or 1000.8, and the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records pertaining to an arrest, the judge may order those records and files pertaining to the arrest to be sealed as described in Section 851.92, upon the written or oral motion of any party in the case, or upon the court’s own motion, and with notice to all parties in the case.

(2) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(3) The defendant may, except as specified in subdivisions (b) and (c), indicate in response to any question concerning the defendant’s prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(4) Subject to subdivisions (b) and (c), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant’s permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(b) The defendant shall be advised that, regardless of the defendant’s successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.
(c) The defendant shall be advised that, regardless of the
defendant’s successful completion of a statutorily authorized drug
diversion or deferred entry of judgment program, an order to seal
records pertaining to an arrest made pursuant to this section has
no effect on a criminal justice agency’s ability to access and use
those sealed records and information regarding sealed arrests, as
described in Section 851.92.

SEC. 4. Section 851.91 is added to the Penal Code, immediately
following Section 851.90, to read:

851.91. (a) (1) (A) A person who has suffered an arrest that
did not result in a conviction may petition the court to have his or
her arrest and related records sealed, as described in Section 851.92.
(B) For purposes of this section, an arrest did not result in a
conviction if any of the following are true:
(i) The statute of limitations has run on every offense upon
which the arrest was based and the prosecuting attorney of the city
or county that would have had jurisdiction over the offense or
offenses upon which the arrest was based has not filed an
accusatory pleading based on the arrest.
(ii) The prosecuting attorney filed an accusatory pleading based
on the arrest, but no conviction occurred, all of the charges have
been dismissed, and none of the charges may be refiled.
(iii) The prosecuting attorney filed an accusatory pleading based
on the arrest, but no conviction occurred and the arrestee has been
acquitted of all of the charges.
(iv) The prosecuting attorney filed an accusatory pleading based
on the arrest, a conviction or convictions occurred, but all of the
convictions have been vacated or reversed on appeal and none of
the charges may be refiled.
(2) A person is not eligible for relief under this section in either
any of the following circumstances:
(A) He or she may still be charged with any of the offenses upon
which the arrest was based.
(B) Any of the arrest charges, as specified by the law
enforcement agency that conducted the arrest, or any of the charges
in the accusatory pleading based on the arrest, if filed, is a charge
of murder or any other offense for which there is no statute of
limitations, except when the person has been acquitted or found
factually innocent of the charge.
(C) The petitioner avoided prosecution by absconding from the jurisdiction in which the arrest took place.

(D) The petitioner avoided prosecution by engaging in identity fraud.

(b) (1) A petition to seal an arrest shall:

(A) Be verified.

(B) Be filed in the court in which the accusatory pleading based on the arrest was filed or, if no accusatory pleading was filed, in a court with criminal jurisdiction in the city or county in which the arrest occurred.

(C) Be filed at least 15 days prior to the hearing on the petition.

(D) Be served, by copy, upon the prosecuting attorney of the city or county in which the arrest occurred and upon the law enforcement agency that made the arrest at least 15 days prior to the hearing on the petition.

(E) Include all of the following information:

(i) The petitioner’s name and date of birth.

(ii) The date of the arrest for which sealing is sought.

(iii) The city and county where the arrest took place.

(iv) The law enforcement agency that made the arrest.

(v) Any other information identifying the arrest that is available from the law enforcement agency that conducted the arrest or from the court in which the accusatory pleading, if any, based on the arrest was filed, including, but not limited to, the case number for the police investigative report documenting the arrest, the name of the arresting officer, and the court number under which the arrest was reviewed by the prosecuting attorney or under which the prosecuting attorney filed an accusatory pleading and court proceedings were initiated.

(vi) The offenses upon which the arrest was based or, if an accusatory pleading was filed based on the arrest, the charges in the accusatory pleading.

(vii) The basis identified in subparagraph (B) of paragraph (1) of subdivision (a) upon which the petitioner is eligible for relief.

(viii) A statement that the petitioner is entitled to have his or her arrest sealed as a matter of right or, if the petitioner is requesting to have his or her arrest sealed in the interests of justice, how the interests of justice would be served by granting the
petition, accompanied by declarations made directly and verified by the petitioner, his or her supporting declarants, or both.

(2) The court may deny a petition for failing to meet any of the requirements described in paragraph (1).

(c) (1) At a hearing on a petition under this section, the petitioner, the prosecuting attorney, and, through the prosecuting attorney, the law enforcement agency that made the arrest, arresting agency, may present evidence to the court. Notwithstanding Section 1538.5 or 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, relevant, and reliable.

(2) The petitioner has the initial burden of proof to show that he or she is entitled to have his or her arrest sealed as a matter of right or that sealing would serve the interests of justice. If the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to respondent prosecuting attorney.

(3) The court shall not grant the petition unless the court finds that petitioner is entitled to relief as a matter of right or has proven that the interests of justice would be served by granting the petition.

(d) A petition to seal an arrest record pursuant to this section may be granted as a matter of right or in the interests of justice.

(1) A petitioner who is eligible for relief under subdivision (a) is entitled to have his or her arrest sealed as a matter of right unless he or she is subject to paragraph (2) or (3). (2).

(2) (A) The (i) A petitioner may have his or her arrest sealed only upon a showing that the sealing would serve the interests of justice if any of the offenses upon which the arrest was based, as specified by the law enforcement agency that made the arrest, or, if an accusatory pleading was filed, any of the charges in the accusatory pleading, was one of the following:

(i) Domestic violence, if the petitioner’s record demonstrates a pattern of domestic violence arrests, convictions, or both.

(ii) (II) Child abuse, if the petitioner’s record demonstrates a pattern of child abuse arrests, convictions, or both.
(iii) Elder abuse, if the petitioner's record demonstrates a pattern of elder abuse arrests, convictions, or both.

(iv) An offense or charge based on physical violence by petitioner against another person.

(v) An offense or charge described in subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, if the petitioner has been convicted, at any time before or after the arrest that is the subject of the petition, of a serious felony in this state or of any offense committed in another jurisdiction which would have been a serious felony if committed in this state:

(B) (i) The petitioner may show that the interests of justice would be served by granting his or her petition through the presentation of evidence:

(ii) If any of the offenses upon which the arrest was based, as specified by the law enforcement agency that made the arrest, or, if an accusatory pleading was filed, any of the charges in the accusatory pleading, was one of violence by petitioner against another person, the court shall provide meaningful opportunity for the prosecuting attorney to contact the victim and for the victim to respond to the petition. The court shall consider the victim's response or the circumstances surrounding the lack thereof, in determining whether the interests of justice would be served by granting the petition.

(3) If the court finds at the hearing that either of the following circumstances is true, the court shall deny the petition:

(A) That the arrest did not result in a conviction because the petitioner absconded from the jurisdiction in which the arrest took place.

(B) That the arrest did not result in a conviction because the petitioner engaged in identity fraud.

(ii) For purposes of this subparagraph, “pattern” means two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests.

(B) In determining whether the interests of justice would be served by sealing an arrest record pursuant to this section, the court may consider any relevant factors, including, but not limited to, any of the following:
(i) Hardship to the petitioner caused by the arrest that is the subject of the petition.
(ii) Declarations or evidence regarding the petitioner’s good character.
(iii) Declarations or evidence regarding the arrest.
(iv) The petitioner’s record of convictions.

e) If the court grants a petition pursuant to this section, the court shall do all of the following:

(1) Issue a written ruling and order to the petitioner stating that the record of arrest has been sealed as to petitioner, that the arrest is deemed not to have occurred, that petitioner may answer any question relating to the sealed arrest accordingly, and that, except as provided in paragraph (2) and Section 851.92, the petitioner is released from all penalties and disabilities resulting from the arrest. The court shall give a copy of this written ruling and order to the petitioner, to the prosecuting attorney, to the law enforcement agency that made the arrest, and to the Department of Justice.

(2) Issue an order to seal the arrest as described in Section 851.92 to the Department of Justice, to the law enforcement agency that made the arrest, to any other law enforcement agency that participated in the arrest, and to the law enforcement agency that administers the master local summary criminal history information that contains the arrest record for the arrest that is the subject of the petition. The court shall give a copy of this order to the petitioner, to the prosecuting attorney, and to any law enforcement agency to which the order is issued.

(A) The sealed arrest may be pleaded and proved in any subsequent prosecution of the petitioner for any other offense, and shall have the same effect as if it had not been sealed.

(B) The sealing of an arrest pursuant to this section does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
The sealing of an arrest pursuant to this section does not affect petitioner’s authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(D) The sealing of an arrest pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(f) The Department of Justice shall furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this section.

SEC. 5. Section 851.92 is added to the Penal Code, to read:

851.92. (a) This section applies when an arrest record is sealed pursuant to Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(b) After the court has issued an order to seal an arrest, the sealing shall be accomplished as follows:

(1) (A) Within 30 days of issuing the order, the court shall forward the order to the Department of Justice, to the law enforcement agency that made the arrest, to any other law enforcement agency that participated in the arrest, and to the law enforcement agency that administers the master local summary criminal history information that contains the arrest record for the arrest that is the subject of the petition. The court shall give a copy of this order to the petitioner, to the prosecuting attorney, and to any law enforcement agency to which the order is issued.

(B) The local summary criminal history information and the state summary criminal history information shall include a note in the arrest record for the arrest that was the subject of the petition to seal the arrest. Include, directly next to or below the entry or entries regarding the sealed arrest, a note stating “arrest sealed” and providing the date that the court issued the order, and the section pursuant to which the arrest was sealed. The responsible local law enforcement agency and the Department of Justice shall ensure that all master copies of the arrest record contain this note. This note shall be included in all master copies of the arrest record, digital or otherwise.

(B) The sealed arrest, or information about a sealed arrest that is contained in other records, shall not be disclosed to the public;
consumer reporting agencies, or any other person or entity except the petitioner or a criminal justice agency.

(C) A criminal justice agency receiving an inquiry regarding the arrest from the public, a consumer reporting agency, or any person or entity except the petitioner or a criminal justice agency shall respond in the following ways:

(i) With a verbal statement that the arrest has been sealed and that no further information is available.

(ii) By providing a written notice that the arrest has been sealed, the section pursuant to which the arrest was sealed, and that any records of the arrest in the possession of, or obtained from, a consumer reporting agency for the purpose of providing or obtaining background checks on the petitioner shall be destroyed and that the failure to destroy the records may subject the consumer reporting agency to criminal and civil liability.

(D) A criminal justice agency may continue to access and use a sealed arrest record and information relating to a sealed arrest, as permitted by law.

(2) (A) A police investigative report related to the sealed arrest shall, as to the petitioner only, only as to the person whose arrest was sealed, be stamped “ARREST SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR,” and shall note next to the stamp the date the arrest was sealed and the section pursuant to which the arrest was sealed. The responsible local law enforcement agency shall ensure that all digital or master copies of the arrest record for the arrest that was the subject of the petition contain this note.

(B) A criminal justice agency may continue to access and use information in a sealed police investigative report.

(3) (A) Court records related to the sealed arrest shall, as to the petitioner only, only as to the person whose arrest was sealed, be stamped “RECORD ARREST SEALED: DO NOT RELEASE OUTSIDE OF THE CRIMINAL JUSTICE SECTOR,” and shall note next to the stamp the date of the sealing and the section pursuant to which the arrest was sealed. This stamp and note shall be included on all master court dockets relating to the arrest, digital or otherwise.

(B) The sealed arrest, or information about a sealed arrest that is contained in other court records, shall not be disclosed to the
public, consumer reporting agencies, or any other person or entity except the petitioner or a criminal justice agency.

(C) A court receiving an inquiry regarding the sealed arrest from the public, a consumer reporting agency, or any person or entity except the petitioner or a criminal justice agency shall respond in the following ways:

(4) Arrest records, police investigative reports, and court records that are sealed under this section shall not be disclosed to the public, consumer reporting agencies, or any other person or entity except the person whose arrest was sealed or a criminal justice agency, or as otherwise authorized in this section.

(5) A criminal justice agency receiving from the public, a consumer reporting agency, or any person or entity except the person whose arrest was sealed or a criminal justice agency, an inquiry regarding the sealed arrest, or a request for arrest records, police investigative reports, or court records, that have been sealed pursuant to this section shall respond in both of the following ways:

   (i) With a verbal statement that the arrest has been sealed and that no further information is available.

   (ii) By providing a written notice that the arrest has been sealed, the section pursuant to which the arrest was sealed, is deemed to have never occurred, shall not be used in any way that could result in denial of any employment, benefit, license, or certificate, and that any records of the arrest in the possession of, or obtained from, a consumer reporting agency for the purpose of providing or obtaining background checks on the petitioner person whose arrest has been sealed shall be destroyed and that the failure to destroy the records may subject the consumer reporting agency to criminal and civil liability.

(D) A criminal justice agency may continue to access and use court records sealed pursuant to this paragraph, and information in court records related to a sealed arrest as permitted by law.

(6) Notwithstanding the sealing of an arrest, a criminal justice agency may continue, in the regular course of its duties, to access, furnish to other criminal justice agencies, and use, including, but not limited to, by discussing in open court and in unsealed court filings, sealed arrests, sealed arrest records, sealed police
investigative reports, sealed court records, and information relating to sealed arrests, to the same extent that would have been permitted for a criminal justice agency if the arrest had not been sealed.

(4) (A) A

(7) With regard to any record or information relating to an arrest that is in the possession of a consumer reporting agency, the consumer reporting agency shall inquire with either the trial court in each county or the Department of Justice on a weekly basis to determine which, if any, arrests have shall, on a weekly basis, inquire with the criminal court having jurisdiction in the county or city in which the arrest took place, whether the arrest has been sealed. When a consumer reporting agency learns that a consumer for which it has a record has had an arrest sealed, either by inquiring with a trial court or Department of Justice or an arrest upon which it possesses information has been sealed by inquiring with the criminal court in the applicable jurisdiction, because the petitioner sent a copy of the court order to the consumer reporting agency, or in another manner, the consumer reporting agency shall delete and destroy all records in its possession relating to the sealed arrest, shall cease to pursue, store, or disseminate any information relating to the sealed arrest, except that it shall notify any person or entity to which it previously provided information relating to the arrest that the arrest has been sealed and sealed, is deemed not to have occurred, occurred, and shall not be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(B) Notwithstanding paragraphs (1) and (3), the trial court and the Department of Justice shall provide information relating to a sealed arrest to consumer reporting agencies for the purpose of complying with this paragraph.

(c) Unless specifically authorized by this section, a person who disseminates information relating to a sealed arrest is subject to a civil penalty of not less than five hundred dollars ($500) and not more than two thousand five hundred dollars ($2,500) per violation. The civil penalty may be enforced by a city attorney, district attorney, or the Attorney General. This subdivision does not limit any existing private right of action. A civil penalty imposed under this section shall be cumulative to civil remedies or penalties imposed under any other law.
(d) The Department of Justice shall furnish forms to be utilized by a person applying to have his or her arrest sealed pursuant to this section.

As used in this section and Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9, all of the following terms have the following meanings:

1. “Arrest record” and “record pertaining to an arrest” mean information about the arrest or detention that is contained in either of the following:
   (A) The master, or a copy of the master, local summary criminal history information, as defined in subdivision (a) of Section 13300.
   (B) The master, or a copy of the master, state summary criminal history information as defined in subparagraph (A) of paragraph (2) of subdivision (a) of Section 11105.

2. “Consumer reporting agency” means a person or entity that is not a criminal justice agency that provides background screening services or criminal history information on identified individuals to the public or to a criminal justice agency to those outside the criminal justice sector or that aggregates into databases, databases that are open to the public or those outside the criminal justice sector upon request or charge, but which are not created or maintained by a criminal justice agency, criminal history information on identified individuals that are open to the public or to a criminal justice agency. For the purposes of this paragraph, a consumer reporting agency includes an investigative consumer reporting agency, as defined in Section 1786.2 of the Civil Code, and a consumer credit reporting agency, as defined in Section 1785.3 of the Civil Code.

3. “Court records” means records, files, and materials created, compiled, or maintained by or for the court in relation to court proceedings, and includes, but is not limited to, indexes, registers of actions, court minutes, court orders, court filings, court exhibits, court progress and status reports, court history summaries, copies of state summary criminal history information and local summary criminal history information, and any other criminal history information contained in any of those materials.

4. “Criminal justice agency” means an agency at any level of government that performs, as its principal function, activities relating to the apprehension, prosecution, defense, adjudication,
incarceration, or correction of criminal suspects and criminal offenders. A criminal justice agency includes, but is not limited to, any of the following:
(A) A court of this state.
(B) A peace officer, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.
(C) A district attorney.
(D) A prosecuting city attorney.
(E) A city attorney pursuing civil gang injunctions pursuant to Section 186.22a or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code or Section 11571 of the Health and Safety Code.
(F) A probation officer.
(G) A parole officer.
(H) A public defender or an attorney representing a person, or a person representing himself or herself, in a criminal proceeding, a proceeding to revoke parole, mandatory supervision, or postrelease community supervision, or in proceeding described in Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3.
(I) A public defender or an attorney representing a person in a criminal proceeding or a proceeding to revoke parole, mandatory supervision, or postrelease community supervision.
(J) An expert, investigator, or other specialist contracted by a prosecuting attorney or defense attorney to accomplish the purpose of the prosecution, defense, or representation in the criminal proceeding.
(K) A correctional officer.
(5) “Police investigative report” means intelligence, analytical, and investigative reports and files created, compiled, and maintained by a law enforcement criminal justice agency and relating to a potential crime, violation of the law, arrest, detention, prosecution, or law enforcement investigation.
SEC. 6. Section 1000.4 of the Penal Code is amended to read:
1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was
deferred shall be deemed to have never occurred and the court may
issue an order to seal the records pertaining to the arrest as
described in Section 851.92. The defendant may indicate in
response to any question concerning his or her prior criminal record
that he or she was not arrested or granted deferred entry of
judgment for the offense, except as specified in subdivision (b).
A record pertaining to an arrest resulting in successful completion
of a deferred entry of judgment program shall not, without the
defendant’s consent, be used in any way that could result in the
denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her
successful completion of the deferred entry of judgment program,
the arrest upon which the judgment was deferred may be disclosed
by the Department of Justice in response to any peace officer
application request and that, notwithstanding subdivision (a), this
section does not relieve him or her of the obligation to disclose
the arrest in response to any direct question contained in any
questionnaire or application for a position as a peace officer, as
defined in Section 830.

(c) The defendant shall be advised that, regardless of the
defendant’s successful completion of a deferred entry of judgment
program, an order to seal records pertaining to an arrest made
pursuant to this section has no effect on a criminal justice agency’s
ability to access and use those sealed records and information
regarding sealed arrests, as described in Section 851.92.

SEC. 7. Section 1001.9 of the Penal Code is amended to read:
1001.9. (a) Any record filed with the Department of Justice
shall indicate the disposition in those cases diverted pursuant to
this chapter. Upon successful completion of a diversion program,
the arrest upon which the diversion was based shall be deemed to
have never occurred and the court may issue an order to seal the
records pertaining to the arrest as described in Section 851.92. The
diveree 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 in subdivision (b). A
record pertaining to an arrest resulting in successful completion
of a diversion program shall not, without the divertee’s consent,
be used in any way that could result in the denial of any
employment, benefit, license, or certificate.
(b) The divertee shall be advised that, regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The divertee shall be advised that, regardless of the defendant’s successful completion of a deferred entry of judgment program, an order to seal records pertaining to an arrest made pursuant to this section has no effect on a criminal justice agency’s ability to access and use those sealed records and information regarding sealed arrests, as described in Section 851.92.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Reentry Council
City and County of San Francisco

April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA  94102

Re: Support for SB 421 – Tiered Registry for Sex Offenses

Dear Mayor Lee, President Breed, and Members:

The Reentry Council of the City and County of San Francisco is pleased to support SB 421: Tiered Registry for Sex Offenses, to replace California’s lifetime registry for all sex offense categories, including those committed by juveniles. The bill co-sponsors include the California Sex Offender Management Board (CASOMB, Legislature-created September 2006), Los Angeles County District Attorney’s Office, California Coalition Against Sexual Assault, and Equality California.

Currently, California is one of only four remaining U.S. states (Alabama, Florida, South Carolina) with a lifetime registry for all sex offenses, regardless if violent or non-violent; contact or non-contact; or adult or juvenile offenders. Here, other than an arduous, cumbersome, arbitrary, and expensive Certificate of Rehabilitation (COR) petition process allowed to less than 1 percent of registrants after a defined number of years, there is no relief from lifetime registry. For the registrant, and his/her family and loved ones, this amounts to a life sentence, creating severe instability and restrictions in employment; residency; presence; education; travel; healthcare; family and civic participation; and other barriers to demonstrating rehabilitation, and living a productive daily life. State and national empirical, fact-based studies conducted by CASOMB; California Department of Corrections and Rehabilitation; U.S. DOJ; Justice Policy Institute; and many others in mental health, law enforcement, and higher education indicate that state and federal sex offense registries are actually likely harmful and counterproductive to community safety. In nearly 28 years since her young son’s abduction, Patty Wetterling, Chair of the National Center for Missing and Exploited Children, has herself questioned the purpose and efficacy of sex offense registries. CASOMB has proposed a tiered registry in its annual reports starting in 2010; and in a 2008 white paper, CASOMB cites many empirical research studies to debunk AWA/SORNA enactment suppositions and fallacies regarding sex offense laws and registries.

This is the 70th year anniversary of the California lifetime sex offense registry. Over 103,000 people are currently on this lifetime registry, 25% of whom were juveniles at the time of their offense. SB 695 provides a tiered registry solution whereby 1) law enforcement resources can be focused on high-risk offenders; 2) proposed tiers are based on seriousness of crime, re-offense risk, and criminal history; 3) and three tiers are established for all sex offenses: Tier 1 (10 years) – misdemeanor or nonviolent felonies; Tier 2 (20 years) – serious or violent sex offenses; and Tier 3 (Lifetime) – high risk offenders, including but not limited to sexually violent, repeat violent, and life-sentenced.

This bill ensures that at long last California law begins to codify mounting, irrefutable empirical evidence that these offenses cover a spectrum of offenses. Fact-based – not myth-based – approaches to public safety.
are needed now to best serve community well-being, short- and long-term. Supporting rehabilitation and reintegration of offender individuals (and their families and loved ones) as productive citizens informs and educates the community in the truth of verified empirical 1-5% sexual re-offense rates; and the need to recognize and encourage a new era in law and policy.

Sincerely,

Members of the Subcommittee on Policy, Legislation, and Practices

Encl: Legislation; Fact Sheet; CDCR Chart
SUMMARY

SB 421 establishes a tiered registry for all sex offenders. Proposed tiers are based on seriousness of crime, risk of sexual reoffending, and criminal history.

BACKGROUND/EXISTING LAW

Currently, all sex offenders must register for life under the Sex Offender Registration Act, regardless of the seriousness of the offense. As a result, California has over 100,000 registrants and that number is growing.

PROBLEM

California is one of four states (Alabama, Florida, South Carolina) with a lifetime sex offender registration requirement for all registered offenders. We need a new registration system that focuses attention and resources on high risk and violent sex offenders. Law enforcement cannot protect the community effectively when they are in the office doing monthly or annual paperwork for low risk offenders. Instead, they should be active in the community monitoring high risk offenders.

The stated purposes of sex offender registration are to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. However, having a sex offender registry has not effectively deterred people from committing future crimes. Furthermore, the public is overwhelmed by the number of offenders displayed online in each neighborhood and may not know which offenders are serious dangers. We need a system that helps law enforcement solve new sex crimes quickly.

SOLUTION

To improve public safety, SB 421 establishes a tiered registry system for all sex offenders:

- Tier 1: Registration for 10 years for misdemeanor or non-violent felonies;
- Tier 2: Registration for 20 years for serious or violent sex offenses; and
- Tier 3: Registration for life for high risk offenders including but not limited to sexually violent predators, repeat violent offenders, and sex offenses requiring a life term.

Offenders in Tiers 1 and 2 must petition the court for removal from the registry at the end of their designated registration period, it is not an automatic removal. The courts have the ability to deny termination in certain circumstances and the District Attorney may request a hearing to oppose any petition for removal. The local registering law enforcement agency must be informed of petitions for removal. Local law enforcement can still notify the community about an offender in any tier in appropriate circumstances.

Individuals who were granted exclusion for offenses that no longer qualify for exclusion shall receive 30 days’ notice from the Department of Justice before being re-posted on the public Megan's Law website. Registering offenders in tiers that are based on the person’s individual record and risk of re-offending will allow law enforcement to concentrate their efforts on making sure high-risk and violent offenders comply with the law.

SPONSORS

- Los Angeles County District Attorney’s Office
- California Sex Offender Management Board
- California Coalition Against Sexual Assault
- Equality California
- Alameda County District Attorney Nancy O’Malley
SUPPORTERS

- Alameda County Board of Supervisors
- Alliance for Constitutional Sex Offense Laws
- American Civil Liberties Union
- Asian American Drug Abuse Program
- Association of Deputy District Attorneys
- Association of Los Angeles Deputy Sheriffs
- California Association of Code Enforcement Officers
- California College and University Police Chiefs Association
- California District Attorneys Association
- California Narcotic Officers Association
- California Police Chiefs Association
- California State Association of Counties
- Courage Campaign
- East Bay Community Law Center
- Family Safety Foundation
- Friends Committee on Legislation
- Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children
- Los Angeles County Professional Peace Officers Association
- Los Angeles Police Protective League
- National Employment Law Project
- National Housing Law Project
- Immigrant Legal Resource Center
- Professor Ira Ellman
- Returning Home Foundation
- Riverside Sheriffs Association
- Root & Rebound
- Rubicon Programs
- Voice for Progress Education Fund

FOR MORE INFORMATION

Aria Ghafari, Legislative Aide, Senator Scott Wiener
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Dan Felizzatto, Los Angeles County District Attorney’s Office
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Janet Neeley, California Sex Offender Management Board
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An act to repeal and add Part 5.7 (commencing with Section 11160) of Division 2 of the Revenue and Taxation Code, relating to local government finance, and making an appropriation therefor. An act to amend Sections 290, 290.006, 290.45, 290.46, 4852.01, 4852.03, and 13125 of, and to repeal and add Section 290.5 of, the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL’S DIGEST


Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking for purposes of committing various sex offenses or extortion, as specified, or attempts to commit those offenses, to register with local law enforcement agencies while residing in the state or while attending school or working in the state. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense.

Existing law requires the Department of Justice to make available to the public information concerning registered sex offenders on an Internet Web site, as specified. Existing law requires that information to include, among other things, whether the offender was subsequently incarcerated for another felony. Existing law also authorizes a person
to file an application for exclusion from the Internet Web site and establishes the requirements for exclusion.

This bill would instead establish 3 tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, as specified. The bill would establish procedures for termination from the sex offender registry for a registered sex offender who is a tier one or tier two offender and who completes his or her mandated minimum registration period under specified conditions. The bill would require the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. The bill would also authorize a tier three offender who meets specified criteria to petition the court for placement in tier two, as specified. The bill would also revise the criteria for exclusion from the Internet Web site.

Existing law requires all basic information stored in state or local criminal offender record information systems to be recorded in the form of specified data elements, including the disposition of the offense.

This bill would require that information to include sentence enhancement data elements.

Existing law authorizes certain counties to impose a local vehicle license fee not exceeding $10 per vehicle, as provided, for the privilege of operating specified vehicles on public roads in the county. Existing law requires a county imposing this fee to contract with the Department of Motor Vehicles to collect and administer the fee, as specified.

Existing law, the Local Assessment Act, also authorizes the City and County of San Francisco to impose a voter approved local assessment for specified vehicles if certain conditions, including approval by local voters, are met. Existing law requires the city and county to contract with the department to collect and administer the assessment, as provided. Existing law requires the Franchise Tax Board to annually notify the department or the Controller, as provided, of estimated revenue losses to the state resulting from taxpayers deducting, for purposes of the Personal Income Tax Law and the Corporation Tax Law, the voter approved local assessments authorized by existing law, as specified. Existing law requires the department to deposit the assessments collected in the San Francisco Vehicle Assessment Fund. Existing law requires the department to transmit the assessments collected, minus the amount currently outstanding that has been
calculated, as provided, to the city and county as promptly as feasible, and would continuously appropriate moneys in the fund for this purpose. Existing law requires the Franchise Tax Board to make adjustments to estimated revenue losses based on actual filings and returns, provides for reimbursement of any differences, as specified, and continuously appropriates moneys in the fund for this purpose.

This bill would revise and recast the Local Assessment Act to authorize any county, including a city and county, to impose a local assessment for specified vehicles if certain conditions, including approval by the board of supervisors, are met. This bill would require a county to contract with the Department of Motor Vehicles to collect and administer the assessment. This bill would require the Franchise Tax Board to annually notify the department or the Controller, as provided, of estimated revenue losses to the state resulting from taxpayers deducting, for purposes of the Personal Income Tax Law and the Corporation Tax Law, the local assessments authorized by this bill, as specified. This bill would require the department to deposit the assessments collected in the County Vehicle Assessment Fund, which would be created by this bill. This bill would require the department to transmit the assessments collected, minus the amount currently outstanding that has been calculated, as provided, to the county as promptly as feasible, and would continuously appropriate moneys in the fund for this purpose. This bill would require the Franchise Tax Board to make adjustments to estimated revenue losses based on actual filings and returns, provide for reimbursement of any differences, as specified, and continuously appropriate moneys in the fund for this purpose.


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

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life period specified in subdivision (d) while residing in
California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and or (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses. offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act following conviction or
adjudication shall register for 10 years, 20 years, or life, following adjudication or conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, or that is an offense described in subdivision (a) or (d) of Section 243.4, Section 285, subdivision (f), (g), (h), or (i) of Section 286, subdivision (c) of Section 288, subdivision (f), (g), (h), or (i) of Section 288a, subdivision (b), (d), or (e) of Section 289, or subdivision (c) of Section 653f.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
(C) The person was convicted of violating Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 288, 288a, or 289; Section 207 or 209 with intent to violate Section 261, 286, 288, 288a, or 289; subdivision (b) of Section 220; Section 269; subdivision (b) of Section 288; Section 288.7; or any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person’s risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).

(B) If the person’s duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:

(i) The person’s risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.
(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(e) The minimum time period for the completion of the required registration period in tier one or two, commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person’s release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

SEC. 2. Section 290.006 of the Penal Code is amended to read:

290.006. (a) Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) The person shall register as a tier one offender in accordance with paragraph (1) of subdivision (d) of Section 290, unless the court finds the person should register as a tier two or tier three offender and states on the record the reasons for its finding.
(c) In determining whether to require the person to register as a tier two or tier three offender, the court shall consider all of the following:

1. The nature of the registerable offense.
2. The age and number of victims, and whether any victim was personally unknown to the person at the time of the offense. A victim is personally unknown to the person for purposes of this paragraph if the victim was known to the offender for less than 24 hours.
3. The criminal and relevant noncriminal behavior of the person before and after conviction for the registerable offense.
4. Whether the person has previously been arrested for, or convicted of, a sexually motivated offense.
5. The person’s current risk of sexual or violent reoffense, including the person’s risk level on the SARATSO static risk assessment instrument, and, if available from past supervision for a sexual offense, the person’s risk level on the SARATSO dynamic and violence risk assessment instruments.

SEC. 3. Section 290.45 of the Penal Code is amended to read:

290.45. (a) (1) Notwithstanding any other law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person’s current risk of sexual or violent reoffense, including, but not limited to, the person’s static, dynamic, and violence risk levels on the SARATSO risk tools described in subdivision (f) of Section 290.04.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person’s arrest.
(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender’s name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender’s vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim. It shall not include any Internet identifier submitted pursuant to this chapter.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of further disclosure. A law enforcement entity may not authorize any disclosure of this information by placing that information on an Internet Web site, and shall not authorize disclosure of Internet identifiers submitted pursuant to this chapter, except as provided in subdivision (h).

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) A person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(2) A person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five
hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) For purposes of this section, “designated law enforcement entity” means the Department of Justice, every district attorney, the Department of Corrections, the Department of the Youth Authority, Corrections and Rehabilitation, the Division of Juvenile Justice, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every each offense described in Section 290, regardless of when it was committed.

(h) (1) Notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier submitted pursuant to this chapter, or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

(2) A designated law enforcement entity shall not disclose or authorize persons or entities to disclose an Internet identifier submitted pursuant to this chapter to the public or other persons, except as required by court order.

SEC. 4. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person’s employer and the listed person’s criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as
specified in this section, as to any person described in subdivision (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a
manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of State Hospitals shall provide to the Department of Justice the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2019, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), is a tier three offender, as described in paragraph (3) of subdivision (d) of Section 290, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before January 1, 2013, the department shall also make available to the public via the Internet Web site his or her static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.
(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(c) (1) On or before July 1, 2005; January 1, 2019, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), is a tier two offender, as described in paragraph (2) of subdivision (d) of Section 290, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is,
by virtue of his or her additional prior or subsequent conviction
of an offense listed in subdivision (c) of Section 290, subject to
this subdivision. (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses:
(A) Section 220, except assault to commit mayhem.
(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.
(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
(i), of Section 286.
(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
(i), of Section 288a.
(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who
has been convicted of the commission or the attempted commission
of any of the offenses listed in, or who is described in, this
subdivision, the Department of Justice shall make available to the
public via the Internet Web site his or her name and known aliases;
a photograph, a physical description, including gender and race;
date of birth, criminal history, the community of residence and
ZIP Code in which the person resides or the county in which the
person is registered as a transient, and any other information that
the Department of Justice deems relevant, but not the information
excluded pursuant to subdivision (a) or the address at which the
person resides.

(2) This subdivision shall apply to the following offenses and
offenders:
(A) Subdivision (a) of Section 243.4, provided that the offense
is a felony.
(B) Section 266, provided that the offense is a felony.
(C) Section 266c, provided that the offense is a felony.
(D) Section 266j.
(E) Section 267.
(F) Subdivision (e) of Section 288, provided that the offense is
a misdemeanor.
(G) Section 288.3, provided that the offense is a misdemeanor.
(H) Section 288.4, provided that the offense is a misdemeanor.
(I) Section 626.81.
(J) Section 647.6.
(K) Section 653e.
(L) Any person required to register pursuant to Section 290
based upon an out-of-state conviction, unless that person is
excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subdivision (e) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.
(B) Section 647.6, if the offense is a misdemeanor.
(C) A felony violation of Section 311.1, subdivision (b), (c), or (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if the person submits to the department a certified copy of a probation report filed in court that clearly states that all victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

(d) (1) If a tier two offender successfully completes no less than the first 10 years of registration as a tier two offender following his or her release from custody on the registerable offense, pursuant to subdivision (e) of Section 290, and he or she has not, subsequent to conviction on the registerable offense, been convicted of an offense described in the Sex Offender Registration Act, or of an offense described in Section 667.6 or 1192.7, that person may file an application with the Department of Justice, on a form
approved by the department, for exclusion from the Internet Web
site. If the department determines that the person meets the
requirements of this subdivision, the department shall grant the
exclusion and no information concerning the person shall be made
available via the Internet Web site described in this section. He
or she bears the burden of proving the facts that make him or her
eligible for exclusion from the Internet Web site. However, a person
who has filed for or been granted an exclusion from the Internet
Web site is not relieved of his or her duty to register as a sex
offender pursuant to Section 290 nor from any otherwise applicable
provision of law.

(2) (A) An offender other than those described in paragraph
(1) who is required to register pursuant to the Sex Offender
Registration Act may apply for exclusion from the Internet Web
site if he or she demonstrates that the person’s only registerable
offense is either of the following:

(D) (i) An offense for which the offender successfully completed
probation, provided that the offender submits to the department a
certified copy of a probation report, presentencing report, report
prepared pursuant to Section 288.1, or other official court document
that clearly demonstrates that the offender was the victim’s parent,
stepparent, sibling, or grandparent and that the crime did not
involve either oral copulation or penetration of the vagina or rectum
of either the victim or the offender by the penis of the other or by
any foreign object.

(ii) An offense for which the offender is on probation at the
time of his or her application, provided that the offender submits
to the department a certified copy of a probation report,
presentencing report, report prepared pursuant to Section 288.1,
or other official court document that clearly demonstrates that the
offender was the victim’s parent, stepparent, sibling, or grandparent
and that the crime did not involve either oral copulation or
penetration of the vagina or rectum of either the victim or the
offender by the penis of the other or by any foreign object.

(iii) (B) If, subsequent to his or her application, the offender commits
a violation of probation resulting in his or her incarceration in
county jail or state prison, his or her exclusion, or application for
exclusion, from the Internet Web site shall be terminated.
(iv) (C) For the purposes of this subparagraph, paragraph, “successfully completed probation” means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(3) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low, below average risk or very low risk as determined by the Coding Rules for the SARATSO static risk assessment instrument.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (e) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2), provided that the information about that person is also displayed on the Department of Justice’s Megan’s Law Internet Web site.
(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity’s Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender, the current risk posed by a specific offender, including his or her risk of sexual or violent reoffense, as indicated by the person’s SARATSO static, dynamic, and violence risk levels, as described in Section 290.04, if available.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender’s address may not be disclosed unless he or she is a person whose address is on the Department of Justice’s Internet Web site pursuant to subdivision (b) or (c). (b).

(f) For purposes of this section, “offense” includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(i)

(j)
Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.
(B) Insurance.
(C) Loans.
(D) Credit.
(E) Employment.
(F) Education, scholarships, or fellowships.
(G) Housing or accommodations.
(H) Benefits, privileges, or services provided by any business establishment.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney’s fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any
person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(k) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(l) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(m) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

SEC. 5. Section 290.5 of the Penal Code is repealed.

290.5. (a) (1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section.
of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

(A) Section 207 or 209 committed with the intent to violate Section 261, 266, 268, 286, 288a, or 289.

(B) Section 220, except assault to commit mayhem.

(C) Section 243.4, provided that the offense is a felony.

(D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 266, provided that the offense is a felony.

(G) Section 266c, provided that the offense is a felony.

(H) Section 266j.

(I) Section 267.

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Section 288.7.

(R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(S) Subdivision (i) or (j) of Section 289.

(T) Section 647.6.

(U) The attempted commission of any of the offenses specified in this paragraph.

(V) The statutory predecessor of any of the offenses specified in this paragraph.

(W) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.

(b) (1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon.
as provided in Chapter 1 (commencing with Section 4800) or
Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.
(2) This subdivision does not apply to misdemeanor violations
of Section 647.6.
(3) The court, upon granting a petition for a certificate of
rehabilitation pursuant to Chapter 3.5 (commencing with Section
4852.01) of Title 6 of Part 3, if the petition was granted prior to
January 1, 1998, may relieve a person of the duty to register under
Section 290 for a violation of Section 288 or 288.5, provided that
the person was granted probation pursuant to subdivision (d) of
Section 1203.066, has complied with the provisions of Section
290 for a continuous period of at least 10 years immediately
preceding the filing of the petition, and has not been convicted of
a felony during that period.
SEC. 6. Section 290.5 is added to the Penal Code, to read:
290.5. (a) (1) A person who is required to register pursuant
to Section 290 and who is a tier one or tier two offender may file
a petition in the superior court in the county in which he or she is
registered for termination from the sex offender registry at the
expiration of his or her mandated minimum registration period.
The petition shall contain proof of the person’s current registration
as a sex offender:
(2) The petition shall be served on the registering law
enforcement agency and the district attorney in the county where
the petition is filed. The registering law enforcement agency shall
report to the district attorney regarding whether the person has
met the requirements for termination pursuant to subdivision (e)
of Section 290. The district attorney may request a hearing on the
petition if the petitioner has not fulfilled the requirement described
in subdivision (e) of Section 290, or if community safety would be
significantly enhanced by the person’s continued registration. If
no hearing is requested, the petition for termination shall be
granted if the court finds the required proof of current registration
is presented in the petition, provided that the registering agency
reported that the person met the requirement for termination
pursuant to subdivision (e) of Section 290, there are no pending
charges against the person which could extend the time to complete
the registration requirements of the tier or change the person’s
tier status, and the person is not in custody or on parole, probation,
or supervised release.
If the district attorney requests a hearing, he or she shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court shall consider: the nature of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person’s current risk of sexual or violent reoffense, including the person’s risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available.

If termination from the registry is denied, the court shall set the time period after which the person can repetition for termination, which shall be at least one year from the date of the denial, but not to exceed five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may repetition.

The court shall notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted or denied. If the petition is denied, the court shall also notify the Department of Justice, California Sex Offender Registry, of the time period after which the person can file a new petition for termination.

(b) (1) A person required to register as a tier two offender, pursuant to paragraph (2) of subdivision (d) of Section 290, may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply: (A) the registerable offense involved no more than one victim 13 to 17 years of age, inclusive; (B) the offender was under 21 years of age at the time of the offense; (C) the registerable offense is not specified in subdivision (c) of Section 667.5, except subdivision (a) of Section 288; and (D) the registerable offense is not specified in Section 236.1.

(2) A tier two offender described in paragraph (1) of subdivision (b) may file a petition with the superior court for termination from
the registry only if he or she has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and has registered for 10 years pursuant to subdivision (e) of Section 290. The court shall determine whether continued registration is necessary, based on the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person’s current risk of sexual or violent reoffense, including the person’s risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least one year.

(c) A tier three offender who obtains early release on a conviction for which registration pursuant to the Sex Offender Registration Act is required and for which he or she was sentenced to a life term may file a petition with the superior court for placement in tier two if the person has registered for 10 years pursuant to subdivision (e) of Section 290 and the person has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667. The court shall determine whether placement in tier two is appropriate, based on the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person’s current risk of sexual or violent reoffense, including the person’s risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known.
The tier two registration period shall commence on the date the court grants the petition. If the petition is denied, the person may not reapply for placement in tier two for at least one year.

(d) A person who was convicted or adjudicated prior to 1987 of an offense requiring registration pursuant to the Sex Offender Registration Act, who (1) is not a tier three offender, (2) has not subsequently been convicted of an offense requiring registration as a sex offender which is described in Sections 290 to 290.006, inclusive, and (3) has registered in the community for 10 years, which time shall not include periods of incarceration reflected on the person’s criminal history record maintained by the Department of Justice, shall not be required to file a petition for termination from the registry pursuant to subdivision (a). Within 12 months of receipt of the person’s annual update of registration in 2018, the Department of Justice shall determine if the person is eligible for termination pursuant to subdivision (e) of Section 290, based on information in the person’s criminal history record maintained at the department. The Department of Justice shall notify the eligible offender at his or her last registered address and shall notify the registering law enforcement agency.

SEC. 7. Section 4852.01 of the Penal Code is amended to read:

4852.01. (a) A person convicted of a felony who is committed to a state prison or other institution or agency, including commitment to a county jail pursuant to subdivision (h) of Section 1170, may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(b) A person convicted of a felony or a person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years’ residence in this state prior to the filing of the petition.

(c) This chapter does not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of Section 269, subdivision (c) of Section
286, Section 288, subdivision (e) of Section 288a, Section 288.5, Section 288.7, or subdivision (j) of Section 289, or persons in military service.

(d) Notwithstanding any other law, the Governor has the right to pardon a person convicted of a violation of Section 269, subdivision (e) of Section 286, Section 288, subdivision (e) of Section 288a, Section 288.5, Section 288.7, or subdivision (j) of Section 289, if there are extraordinary circumstances.

SEC. 8. Section 4852.03 of the Penal Code is amended to read:

4852.03. (a) The period of rehabilitation commences upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

1. An additional four years in the case of a person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.
2. An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Section 290, except that in the case of a person convicted of a violation of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or 314, an additional two years, Sections 290 to 290.024, inclusive.
3. An additional two years in the case of a person convicted of committing an offense that is not listed in paragraph (1) or paragraph (2) and that does not carry a life sentence.
4. The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that the statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(b) Unless and until the period of rehabilitation required by subdivision (a) has passed, the petitioner shall be ineligible to file
his or her petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

SEC. 9. Section 13125 of the Penal Code is amended to read:

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

Name—(full name)
Aliases
Monikers
Race
Sex
Date of birth
Place of birth (state or country)
Height
Weight
Hair color
Eye color
CII number
FBI number
Social security number
California operators license number
Fingerprint classification number
Henry
NCIC
Address

The following arrest data:

Arresting agency
Booking number
Date of arrest
Offenses charged
Statute citations
Literal descriptions
Police disposition
The following misdemeanor or infraction data or preliminary hearing data:

- County and court name
- Date complaint filed
- Original offenses charged in a complaint or citation
- Held to answer
- Certified plea
- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
- Court trial
- Jury trial
- Convicted
- Plea
- Court trial
- Jury trial
- Date of disposition
- Convicted offenses
- Sentence

Sentence enhancement data elements

- Proceedings suspended
- Reason suspended

The following superior court data:

- County
- Date complaint filed
- Type of proceeding
- Indictment
- Information
- Certification
- Original offenses charged in indictment or information
- Disposition
- Not convicted
- Dismissed
Acquitted
Court trial
Jury trial
On transcript
Convicted—felony, misdemeanor
Plea
Court trial
Jury trial
On transcript
Date of disposition
Convicted offenses
Sentence
Sentence enhancement data elements
Proceedings suspended
Reason suspended
Source of reopened cases
The following corrections data:
Adult probation
County
Type of court
Court number
Offense
Date on probation
Date removed
Reason for removal
Jail (unsentenced prisoners only)
Offenses charged
Name of jail or institution
Date received
Date released
Reason for release
Bail on own recognizance
Bail
Other
Committing agency
County jail (sentenced prisoners only)
Name of jail, camp, or other
Convicted offense
Sentence
Sentence enhancement data elements
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All matter omitted in this version of the bill appears in the bill as amended in the Senate, March 30, 2017. (JR11)
April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA  94102

Re:  Support for SB 8 – Diversion: Mental Disorders

Dear Mayor Lee, President Breed and Members:

The Reentry Council of the City and County of San Francisco is pleased to support SB 8 (Beall) – Diversion: Mental Disorders, to create a pretrial diversion program for defendants who commit a misdemeanor or realigned felony offense and who suffer from a mental disorder if the mental disorder played a significant role in the commission of the charged offense.

SB 8 builds on existing California law that provides diversion options for veterans who suffer from PTSD or other mental health conditions. These programs result in extremely low recidivism rates among participants and significant cost savings to counties.

Roughly a third of inmates in California’s jails suffer from serious mental illness. Too often, untreated mental illness was the reason these individuals became involved with law enforcement. SB 8 provides trial courts the discretion to order mental health treatment for a person who commits a minor offense, avoiding the unnecessary costs of trial and incarceration.

Diversion will not be an automatic response. SB 8 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. Before diversion can even be considered by the court, the defense must present reliable evidence regarding the underlying mental health condition, its connection to the charged offense, and the likelihood that the defendant will benefit from treatment in an appropriate program.

The goal of the diversion program created by SB 8 is to address the population of jail inmates who suffer from a mental disorder whose incarceration often leads to worsening of their condition and in some cases suicide. To the extent this bill results in the successful completion of
treatment programs by defendants, it could result in significant future cost savings to the criminal justice system. For these reasons, the Reentry Council supports this bill and urges the City/County Committee on Legislation to support it as well.

Sincerely,

Members of the Reentry Council of the City and County of San Francisco
Encl: Introduced Legislation
SB 8 (Beall)
Mental Health: Pre-Trial Diversion
Fact Sheet

ISSUE

Roughly a third of inmates in California’s jails suffer from serious mental illness. Too often, untreated mental illness was the reason these individuals became involved with law enforcement. SB 8 provides trial courts the discretion to order mental health treatment for a person who commits a minor offense, avoiding the unnecessary costs of trial and incarceration.

BACKGROUND

One reason for the constant jailing of mentally ill Californians is that under current law, trial courts have no ability to rehabilitate mentally ill Californians charged with even minor criminal offenses, without first convicting them, thereby damaging their prospects for future employment and housing.

For example, even where an offense is clearly a product of mental illness, a court cannot order mental health treatment, relevant counselling, or adherence to a medication regime unless the person suffering from mental illness is first convicted, and then placed on probation or sent to jail at county expense.

By reserving court-ordered services for the mentally ill until after a conviction, current law leads to higher recidivism rates when mentally ill defendants are denied the services they need to stay out of trouble, while simultaneously given the additional burden of a criminal record.

Such an approach is not only grossly unfair to people whose offenses are the product of mental illness, it is also impractical and costly. For example, while community based treatment for a mentally ill defendant costs roughly $20,000 per year (and greatly reduces recidivism), jailing that same defendant (with a greater risk of recidivism) costs the community more than $50,000 a year.

The predictable results of California’s current reliance on this outdated method are higher costs for taxpayers, who are forced to pay for the continuous warehousing of the mentally ill, when early, court-assisted interventions are far more likely to lead to longer, cheaper, more stable solutions for the community and for the person suffering from mental illness.

THIS BILL

SB 8 builds on existing California law that provides diversion options for veterans who suffer from PTSD or other mental health conditions. These programs result in extremely low recidivism rates among participants and significant cost savings to counties.

SB 8 grants trial courts the discretion to offer a diversionary sentence to defendants who suffer from mental illness when charged with low level offenses, after a showing that mental illness played a significant role in the commission of the underlying offense, and that the defendant would benefit from mental health treatment.

Diversion will not be an automatic response. SB 8 provides a tool for trial courts to use in appropriate cases when diversion is the best option and treatment resources are available. Before diversion can even be considered by the court, the defense must present reliable evidence regarding the underlying mental health condition, its connection to the charged offense, and the likelihood that the defendant will benefit from treatment in an appropriate program.

SB 8 will save California money by avoiding trial and incarceration costs in situations where treatment is more appropriate. A diversionary sentence is designed to address the underlying cause of the offense- mental illness. When defendants participate in treatment and rehabilitation, they are less likely to re-offend.

Californians who complete diversionary sentences will be more likely to access housing, find employment, and contribute to their communities.

STATUS/VOTES

Introduced December 5, 2016

SUPPORT

California Public Defenders Association (Sponsor)

FOR MORE INFORMATION

Staff Contact: Carrie Martin Holmes
Carrie.Holmes@sen.ca.gov (916) 651-4015
An act to add Chapter 2.9D (commencing with Section 1001.82) to Title 6 of Part 2 of the Penal Code, relating to diversion.

LEGISLATIVE COUNSEL’S DIGEST

SB 8, as amended, Beall. Diversion: mental disorders.

Existing law authorizes a court, with the consent of the defendant and a waiver of the defendant’s speedy trial right, to postpone prosecution of a misdemeanor and place the defendant in a pretrial diversion program if defendant is suffering from sexual trauma, a traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. Existing law authorizes the defendant to be referred to services for treatment and requires the responsible agencies to report to the court and the prosecution not less than every 6 months.

This bill would authorize a court, with the consent of the defendant and a waiver of the defendant’s speedy trial right, to postpone prosecution of a misdemeanor or a felony punishable in a county jail, and place the defendant in a pretrial diversion program if the court is satisfied the defendant suffers from a mental disorder, that the defendant’s mental disorder played a significant role in the commission of the charged offense, and that the defendant would benefit from mental health treatment. The bill would allow the defense to arrange, to the satisfaction of the court, for a program of mental health treatment.
utilizing existing inpatient or outpatient mental health resources. The bill would require the defense to provide reports on the defendant’s progress to the court and the prosecution not less than every 6 months. By increasing the duties of local prosecutors, this bill would impose a state-mandated local program. The bill would require the arrest, upon successful completion of the diversion program, to be deemed never to have occurred, except as provided.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

SECTION 1. Chapter 2.9D (commencing with Section 1001.82) is added to Title 6 of Part 2 of the Penal Code, to read:

Chapter 2.9D. Diversion of Low-Level Offenders Whose Offense is a Product of Mental Illness

1001.82. (a) Notwithstanding any other law, in any case before the court on an accusatory pleading alleging the commission of a misdemeanor offense or felony offense punishable in a county jail pursuant to subdivision (h) of Section 1170, the court may grant pretrial diversion to a defendant pursuant to this section if he or she meets all of the requirements specified in subdivision (b).

(b) Pretrial diversion may be granted pursuant to this section if all of the following criteria are met:

(1) The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, or post-traumatic stress disorder. Evidence of the defendant’s mental disorder shall be provided by the defense and may take the form of an opinion by a licensed psychiatrist or psychologist, records of prior psychiatric
hospitalizations, evidence that the defendant receives federal Supplemental Security Income benefits, or any other reliable evidence.

(2) The court is satisfied that the defendant’s mental disorder played a significant role in the commission of the charged offense. A court may conclude that a defendant’s mental disorder played a significant role in the commission of the charged offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant’s mental health treatment provider, medical records, or records by qualified medical experts, the court concludes that the defendant’s mental disorder substantially contributed to the defendant’s involvement in the commission of the offense.

(3) The court is satisfied that the defendant would benefit from mental health treatment.

(4) The defendant consents to diversion and waives his or her right to a speedy trial.

(c) As used in this chapter, “pretrial diversion” means the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication to allow the defendant to undergo mental health treatment, subject to the following:

(1) The defense shall arrange, to the satisfaction of the court, for a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. The treatment may be procured using private or public funds, but a referral may be made to a county mental health agency only if that agency has agreed to accept responsibility for the treatment of the defendant and mental health services are provided only to the extent that resources are available and the defendant is eligible for those mental health services. The defense shall provide reports to the court and the prosecutor from the divertee’s mental health provider on the divertee’s progress in the diversion program not less than every six months.

(2) If it appears to the court that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from the treatment and services provided pursuant to the diversion program, the court shall, after notice to the divertee,
hold a hearing to determine whether the criminal proceedings should be reinstituted.

(3) The period during which criminal proceedings against the defendant may be diverted shall be no longer than two years.

(d) If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. Upon dismissal of the charges, a record shall be filed with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed never to have occurred. The divertee who successfully completes the diversion program 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 in subdivision (e).

(e) Regardless of his or her successful completion of diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request. Notwithstanding subdivision (d), this section does not relieve the divertee who successfully completes diversion pursuant to this section of his or her obligation to disclose the arrest in a response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830. The divertee shall be advised of the requirements of this subdivision upon the successful completion of diversion.

(f) A finding that the defendant suffers from a mental disorder, any progress reports concerning the defendant’s treatment, or any other records related to a mental disorder that were created as a result of diversion pursuant to this section may not be used in any other proceeding without the defendant’s consent.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
April 27, 2017

Mayor Edwin Lee, Mayor
City of San Francisco
Hon. London Breed, President
Members, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA  94102

Re: Support for SB 180 (Mitchell) – Repeal Ineffective Sentencing Enhancements Act

Dear Mayor Lee, President Breed, and Members:

The Reentry Council of the City and County of San Francisco is pleased to support SB 180 (Mitchell), commonly known as “Repeal Ineffective Sentencing Enhancements Act.” This legislation would repeal the three-year sentence enhancement for prior drug convictions, with an exception for convictions involving a minor.

Section 11370.2 of the Health and Safety Code imposes sentence enhancements on a person convicted of a violation of, or of conspiracy to violate, specified crimes relating to controlled substances a sentence enhancement to include a full, separate, and consecutive 3-year term for each prior conviction of, or for each prior conviction of conspiracy to violate, specified controlled substances crimes, including possession for sale and purchase for sale of opiates, opium derivatives, and hallucinogenic substances.

This bill would instead limit the above sentence enhancement to only be based on each prior conviction of, or on each prior conviction of conspiracy to violate, the crime of using a minor in the commission of offenses involving specified controlled substances.

Repealing these enhancements would free funds spent on housing substance users in San Francisco jails, and allow state and county funds to be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance use treatment, job programs, and affordable housing.

Additionally, the RISE Act will reduce racial disparities in the criminal justice system. These enhancements based on prior convictions target low-income communities, communities of color, as well as those with substance use and mental health needs.
For these reasons, the Reentry Council supports this bill and urges the City/County Committee on Legislation to support it as well.

Sincerely,

Members of the Reentry Council of the City and County of San Francisco

Encl: Introduced Legislation
ISSUE

The Repeal Ineffective Sentencing Enhancement Act (RISE) will reduce jail overcrowding by amending the code section that doubles or triples the sentence for a nonviolent drug offense if a person has been previously convicted of a similar offense. As of 2014, there were more than 1,635 people in county jails across California sentenced to five to ten years. There were at least 124 people sentenced to more than ten years in county jail. The leading causes of these excessive sentences are drug sales, possession for sale, or similar nonviolent drug offenses, which are compounded by cruel and costly sentencing enhancements. Thousands more are serving such sentences in prison.

In November 2016, voters overwhelmingly passed Proposition 57, making people in prison with nonviolent convictions eligible for parole after completing their base terms – prior to serving time on any sentence enhancements. However, Proposition 57 does not impact people in county jail. Thus, people in county jail can serve longer sentences than those in state prison, even if they have been convicted of the same crime.

The current policy of sentencing people with nonviolent convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use.

BACKGROUND

Sentence enhancements, which were central strategies to the failed War on Drugs, were utterly ineffective in reducing or deterring drug use and availability. Controlled substances are now cheaper and more widely available than ever before, despite a massive investment of tax revenue and human lives in an unprecedented buildup of prisons and jails.

The drug war has devastated families, low-income communities, and communities of color who are disproportionately incarcerated. Young people are swept up in minor crimes and suffer years of incarceration followed by lifetime barriers to employment and ineligibility for education and housing benefits. The emphasis on incarceration rather than public health strategies contributed to the worst epidemic of fatal opioid overdose in our country’s history, and high rates of HIV and viral hepatitis among drug users.

Tragically, California underfunds the programs research shows would be most effective in reducing the suffering caused by substance use disorders and illegal drug sales in our communities: community-based drug treatment, employment and housing for persons with prior convictions, and preschool and afterschool programs proven to reduce adolescent drug use and involvement in drug markets.

In recent years, Governor Brown signed bills by Senator Mitchell, Assemblymember Bradford, and Assemblymember Quirk to reform drug sentences for possession of crack cocaine for sale and for the transportation of controlled substances. In 2014 voters passed Proposition 47, which reduces many non-violent felonies including drug possession to a misdemeanor. In 2016, the voters decriminalized possession of marijuana and reduced penalties for growing or selling marijuana (Proposition 64) and provided the parole board the authority to release people with nonviolent convictions.

THIS BILL

SB 180 is one modest step in implementing the bipartisan movement to end wasteful incarceration spending in favor of community reinvestment.

Specifically, SB 180 will repeal certain sections of Health & Safety Code 11370.2 to remove sentencing enhancement that add additional three-year terms of incarceration for each prior conviction of nonviolent drug offenses. The bill does not repeal sentence enhancements for using a minor to commit drug offenses, nor does it amend any other felony enhancement.
An act to amend Section 11370.2 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL’S DIGEST

SB 180, as introduced, Mitchell. Controlled substances: sentence enhancements: prior convictions.

Existing law imposes on a person convicted of a violation of, or of conspiracy to violate, specified crimes relating to controlled substances a sentence enhancement to include a full, separate, and consecutive 3-year term for each prior conviction of, or for each prior conviction of conspiracy to violate, specified controlled substances crimes, including possession for sale and purchase for sale of opiates, opium derivatives, and hallucinogenic substances.

This bill would instead limit the above sentence enhancement to only be based on each prior conviction of, or on each prior conviction of conspiracy to violate, the crime of using a minor in the commission of offenses involving specified controlled substances.


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

1 SECTION 1. Section 11370.2 of the Health and Safety Code is amended to read:

3 11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall
receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, 11380, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, 11380, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, 11380, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(f) Prior convictions from another jurisdiction qualify for use under this section pursuant to Section 668.
To Whom It May Concern:

We are a group of young adults planning a stop the violence event in the Tenderloin. This event is inspired by the tragic shooting death of our loved-one Antonio (Tone) Stanberry last Sunday on April 2nd, 2017. We are looking for organizations and individuals to commit to sitting down with us to brainstorm what this event will look like. The following entities have committed to attending the meeting so far: Supervisor Jane Kim’s Office, St. Anthony’s Foundation, Larking Street Youth Services and At the Crossroads. The time and location of meeting will be determined later.

Tone had twin girls and was recently married before his death. There was another murder today in the T.L. from a knife attack. There is constant violence, beatings, stabbings, bullying, and shootings in the T.L. The violence is escalating and we don’t understand why. Residents, families, young people and everyone that passes through our community have to stay on constant guard. We feel we cannot sit back and do nothing any longer.

We want to close Jones St. between Golden Gate and McAllister for an event. Some of the things we discussed is having a fun day for young adults and youth that is empowering and connects them to the Police Department and other service providers. We would like there to be a stage where community leaders can give uplifting and moving speeches, positive performances, poetry and music. We would also like tabling, food and exciting activities for young people.

It is very important that we have the full support of the Police department and have activities that connect the community with the police in meaningful ways. We would also like probation officers, the Sheriff’s Dept. and other law enforcement agencies to participate. We believe challenging violence is going to take a strong relationship between the young people and law enforcement.

Please contact any of the following individuals below to make a commitment to attend our upcoming planning meeting.

Amati Adkins        Majeid Crawford        Charmin Hollins
415-637-2200        415-424-0155        415-724-4923
bubcheeze@gmail.com majeidcrawford@gmail.com moban415@gmail.com