California Board of PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

NOTICE OF LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE MEETING

Friday, June 10, 2022
10:00 a.m. – 2:00 p.m. or until completion of business

If Joining by Computer:

https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mf8c5265d2e0acf9b4ce42eb5dddac526

If joining using the link above
Webinar number: 2484 779 6661
Webinar password: BOP06102022

If Joining by Phone:

+1-415-655-0001 US Toll
Access code: 248 477 96661
Passcode: 26706102

The Committee will hold the Committee Meeting via WebEx as noted above, and via telephone conference at the following locations:

Cerritos Field Office HQV
12750 Center Court Drive South
Ste 750
Cerritos, CA 90703

Milton Marks Conference Center-Monterey Room
455 Golden Gate Ave, Lower Level
San Francisco, CA 94102

8920 Wilshire Blvd, Ste 334
Beverly Hills, CA 90211

To avoid potential technical difficulties, please consider submitting written comments by May 18, 2022, to bopmail@dca.ca.gov for consideration.

Committee Members
Marisela Cervantes, EdD, MPA, Chair
Sheryll Casuga, PsyD
Stephen Phillips, JD, PsyD

Board Staff

Antonette Sorrick, Executive Officer
Jonathan Burke, Assistant Executive Officer
Stephanie Cheung, Licensing Manager
Jason Glasspiegel, Central Services Manager
Sandra Monterrubio, Enforcement Program Manager
Suzy Costa, Legislative and Regulatory Analyst
Sarah Proteau, Central Services Office Technician
Rebecca Bon – Board Counsel
Heather Hoganson – Regulatory Counsel

Friday, June 10, 2022

AGENDA

10:00 a.m. – 2:00 p.m. or Until Completion of Business

1. Call to Order/Roll Call/Establishment of a Quorum

2. Chairperson's Welcome and Opening Remarks

3. Public Comment for Items Not on the Agenda. Note: The Committee May Not Discuss or Take Action on Any Matter Raised During this Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code sections 11125 and 11125.7(a)].

4. COVID-19 Waiver Update (A. Sorrick)

5. Discussion and Possible Approval of the Committee Meeting Minutes: March 25, 2022 (J. Glasspiegel)

6. Legislation from the 2021 Legislative Session: Review and Possible Action (M. Cervantes)

    a) Board Sponsored Legislation
        1. SB 401 (Pan) Healing arts: psychology - Amendments to sections 2960 and 2960.1 of the Business and Professions Code Regarding Denial, Suspension and Revocation for Acts of Sexual Contact

    b) Bills with Active Positions Taken by the Board
        1. AB 32 (Aguiar-Curry) Telehealth
        2. SB 731 (Durazo) Criminal records: relief

    c) Watch Bills
        1. AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses
        2. AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions

7. Legislation from the 2022 Legislative Session: Review and Possible Action (M. Cervantes)

   a) Review of Bills for Active Position Recommendations to the Board
      1. AB 2222 (Reyes) Student financial aid: Golden State Social Opportunities Program

   b) Bills with Active Positions Taken by the Board

      1. AB 1662 (Gipson) Licensing boards: disqualification from licensure: criminal conviction.
      2. AB 1733 (Quirk) State bodies: open meetings.
      3. AB 2123 (Villapudua) Bringing Health Care into Communities Act of 2023.
      4. AB 2754 (Bauer-Kahan) Psychology: supervising psychologists: qualifications.
      5. SB 1365 (Jones) Licensing boards: procedures.
      6. SB 1428 (Archuleta) Psychologists: psychological testing technician: registration.

   c) Watch Bills

      1. AB 1795 (Fong) Open meetings: remote participation.
      2. AB 1860 (Ward) Substance abuse treatment: certification.
      3. AB 1921 (Jones-Sawyer) Correctional officers.
      4. AB 1988 (Bauer-Kahan) Warren-911-Emergency Assistance Act and Miles Hall-988-Mental Health and Suicide Prevention Lifeline
      5. AB 2080 (Wood) Health Care Consolidation and Contracting Fairness Act of 2022.
      6. AB 2104 (Flora) Professions and vocations.
      7. AB 2229 (Luz Rivas) Peace officers: minimum standards: bias evaluation.
      8. AB 2274 (Blanca Rubio) Mandated reporters: statute of limitations.
      9. SB 1031 (Ochoa Bogh) Healing arts boards: inactive license fees.
      10. SB 1223 (Becker) Criminal procedure: mental health diversion.

8. Legislative Items for Future Meeting. The Committee May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Committee or Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Committee or Board to Discuss Such Items Pursuant to Government Code Section 11125.4

9. Regulatory Update, Review, and Consideration of Additional Changes (J. Glasspiegel)
   a) 16 CCR sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Registered Psychological Associates
   b) 16 CCR sections 1381.10, 1392, and 1397.69 – Retired License, Renewal of Expired License, Psychologist Fees (retired license)

c) 16 CCR sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development
d) 16 CCR sections 1391.13, and 1391.14 – Inactive Psychological Associates Registration and Reactivating a Psychological Associate Registration
e) 16 CCR sections 1392 and 1392.1 – Psychologist Fees and Psychological Associate Fees
f) 16 CCR 1395.2 – Disciplinary Guidelines and Uniform Standards Related to Substance-Abusing Licensees
g) 16 CCR sections 1380.3, 1381, 1381.1, 1381.2, 1381.4, 1381.5, 1382, 1382.3, 1382.4, 1382.5, 1386, 1387, 1387.1, 1387.2, 1387.3, 1387.4, 1387.5, 1387.6, 1387.10, 1388, 1388.6, 1389, 1389.1, 1391, 1391.1, 1391.3, 1391.4, 1391.5, 1391.6, 1391.8, 1391.11, and 1391.12 – Pathways to Licensure
h) 16 CCR sections 1380.6, 1393, 1396, 1396.1, 1396.2, 1396.3, 1396.4, 1396.5, 1397, 1397.1, 1397.2, 1397.35, 1397.37, 1397.39, 1397.50, 1397.51, 1397.52, 1397.53, 1397.54, 1397.55 - Enforcement Provisions

10. Recommendations for Agenda Items for Future Board Meetings. Note: The Committee May Not Discuss or Take Action on Any Matter Raised During This Public Comment Section, Except to Decide Whether to Place the Matter on the Agenda of a Future Meeting [Government Code Sections 11125 and 11125.7(a)].

ADJOURNMENT

Action may be taken on any item on the agenda. Items may be taken out of order or held over to a subsequent meeting, for convenience, to accommodate speakers, or to maintain a quorum. Meetings of the Board of Psychology are open to the public except when specifically noticed otherwise, in accordance with the Open Meeting Act.

In the event that a quorum of the Committee is unavailable, the chair may, at their discretion, continue to discuss items from the agenda and to vote to make recommendations to the full Committee at a future meeting [Government Code section 11125(c)].

The meeting is accessible to the physically disabled. To request disability-related accommodations, use the contact information below. Please submit your request at least five (5) business days before the meeting to help ensure availability of the accommodation.

You may access this agenda and the meeting materials at www.psychology.ca.gov. The meeting may be canceled without notice. To confirm a specific meeting, please contact the Board.

Contact Person: Antonette Sorrick
1625 N. Market Boulevard, Suite N-215
Sacramento, CA 95834
(916) 574-7720
bopmail@dca.ca.gov

The goal of this committee is to advocate and promote legislation that advances the ethical and competent practice of psychology to protect consumers of psychological services. The committee reviews and tracks legislation that affects the Board, consumers, and the profession of psychology, and recommends positions on legislation for consideration by the Board.

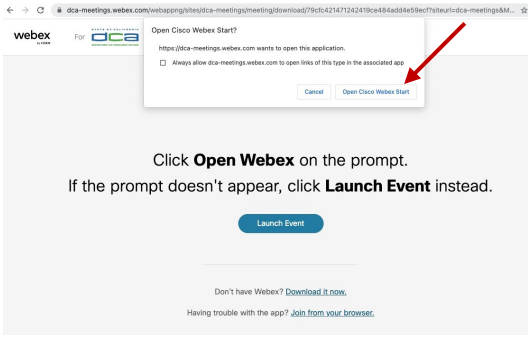
Webex QuickStart

Getting Connected

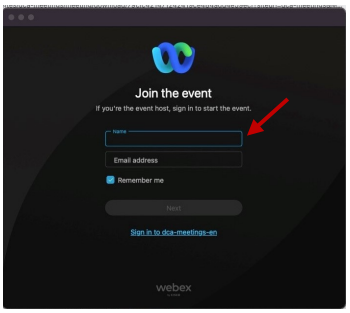
If joining using the meeting link

1. Click on the meeting link. This can be found in the meeting notice you received.

2. If you have not previously used Webex on your device, your web browser may ask if you want to open Webex. Click "Open Cisco Webex Start" or "Open Webex", whichever option is presented.
   DO NOT click "Join from your browser", as you will not be able to participate during the meeting.



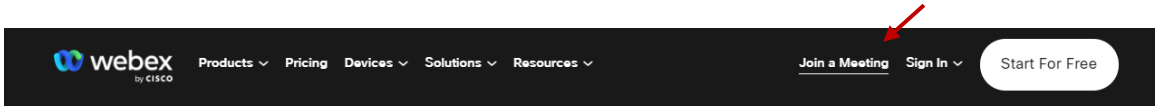
3. Enter your name and email address.
   Click "Join as a guest" .
   Accept any request for permission to use your microphone and/or camera.



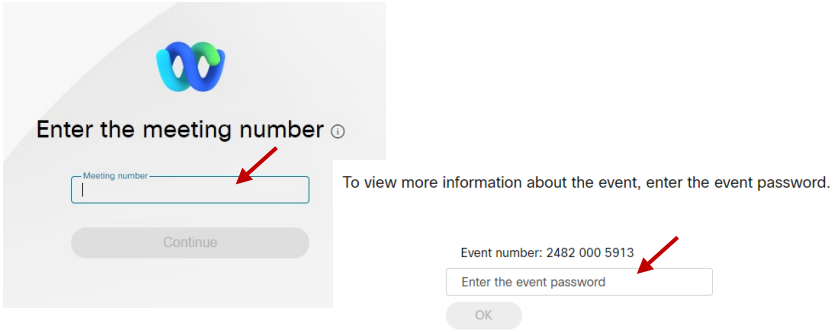
OR

If joining from Webex.com

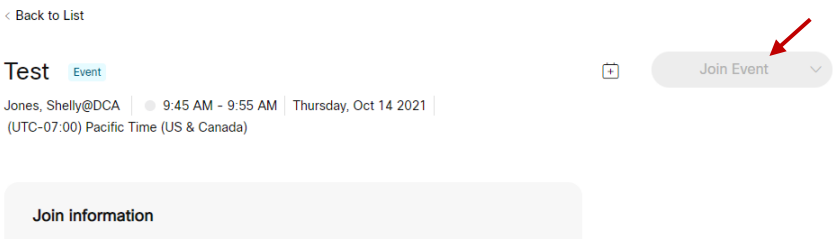
1. Click on "Join a Meeting" at the top of the Webex window.



2. Enter the meeting/event number and click "Continue" . Enter the event password and click "OK" . This can be found in the meeting notice you received.



3. The meeting information will be displayed. Click "Join Event" .



OR

Connect via telephone:

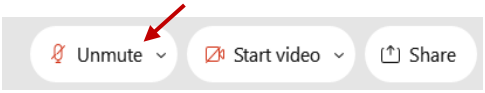
You may also join the meeting by calling in using the phone number, access code, and passcode provided in the meeting notice.

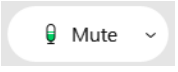
Webex QuickStart

Audio

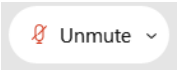
Microphone

Microphone control (mute/unmute button) is located on the command row.





Green microphone = Unmuted: People in the meeting can hear you.

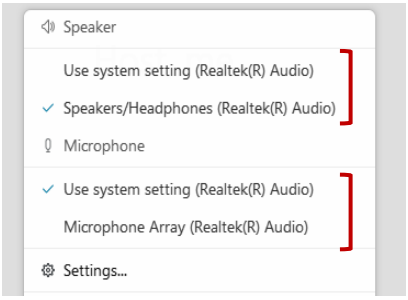


Red microphone = Muted: No one in the meeting can hear you.

Note: Only panelists can mute/unmute their own microphones. Attendees will remain muted unless the moderator enables their microphone at which time the attendee will be provided the ability to unmute their microphone by clicking on "Unmute Me".

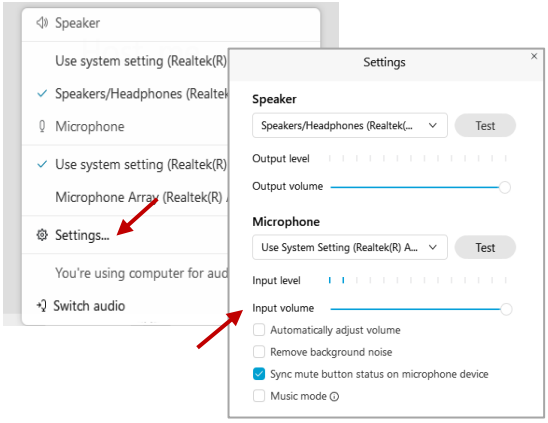
If you cannot hear or be heard

1. Click on the bottom facing arrow located on the Mute/Unmute button.
2. From the pop-up window, select a different:
   - Microphone option if participants can't hear you.
   - Speaker option if you can't hear participants.



If your microphone volume is too low or too high

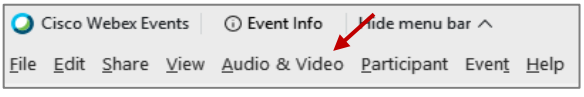
1. Locate the command row – click on the bottom facing arrow located on the Mute/Unmute button.
2. From the pop-up window:
   - Click on "Settings…":
   - Drag the "Input Volume" located under microphone settings to adjust your volume.

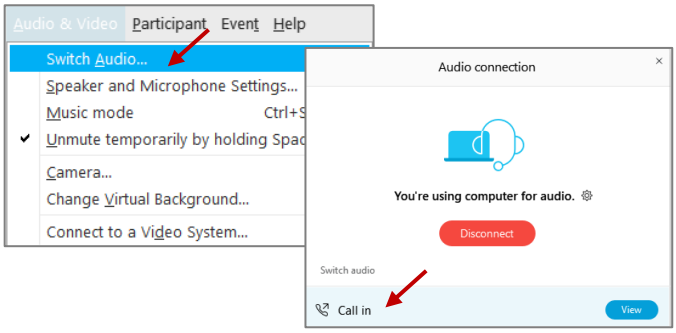


Audio Connectivity Issues

If you are connected by computer or tablet and you have audio issues or no microphone/speakers, you can link your phone through webex. Your phone will then become your audio source during the meeting.

1. Click on "Audio & Video" from the menu bar.
2. Select "Switch Audio" from the drop-down menu.
3. Select the "Call In" option and following the directions.

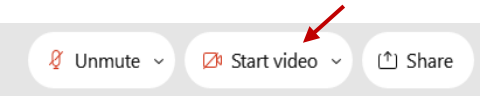


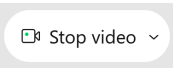


Web Camera

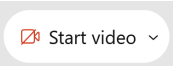
Only panelists (e.g. staff, board members, presenters) can access the web camera feature.

Camera control (Start Video/Stop Video button) is located on the command row.





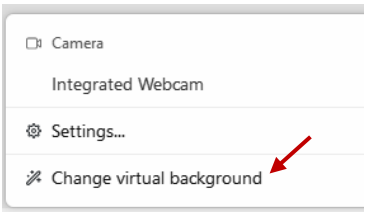
Green dot in camera = Camera is on: People in the meeting can see you.



Red dot in camera = Camera is off : No one in the meeting can see you.

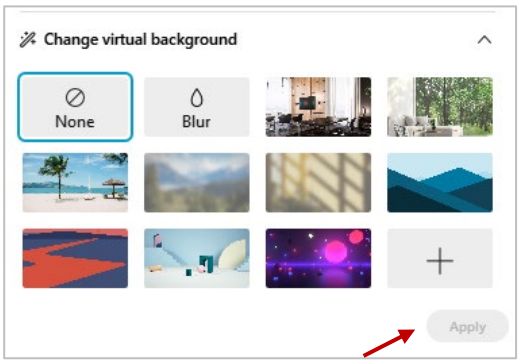
Virtual Background

1. To access virtual backgrounds, click on the bottom facing arrow located on the video button.



2. Click on “Change Virtual Background”.

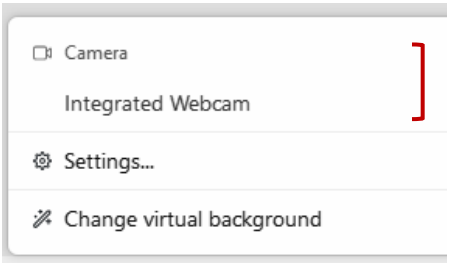
3. From the pop-up window, click on any of the available images to display that image as your virtual background and click “Apply”.



If you cannot be seen

1. Locate the command row – click on the bottom facing arrow located on the video button.

2. From the pop-up window, select a different camera from the list.



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MEMORANDUM

DATE	May 13, 2022
TO	Legislative and Regulatory Affairs Committee Members
FROM	Antonette Sorrick, Executive Officer
SUBJECT	Agenda Item #4 –COVID-19 Waiver Update

Background:
Attached are the current active waivers for the Board of Psychology. Waivers are active based on the Governor's declared state of emergency.

Action Requested:
No further action is needed.

Attachment:
Waiver Update 5/20/22

Waiver Topic	Code Section(s) Waived	Summary	Submission Date	Approval Status	Submitted By	Waiver Status
CPLEE for Restoration of License	Business and Professions Code Section 2986 California Code of Regulation Section 1397.67(b)	This waiver would allow the board to restore licenses of psychologists whose California licenses have cancelled without requiring the board's law and ethics examination (CPLEE). This waiver would become effective 3/4/20 until 6/30/20, or when the declaration of emergency is lifted. This would be consistent with the DCA Waiver DCA-20-02 Reinstatement of Licensure. This waiver would help with the workforce surge.	Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20. Expires when declared emergency is lifted.	Board of Psychology	Active
SPE Time Limitation	California Code of Regulations Section 1387(a)	The regulation allows a psychological trainee to request that the Board extend the time limitations of 30/60 consecutive months to accrue their pre-doctoral and post-doctoral hours of supervised professional experience (respectively) required for licensure. The waiver requested would be to allow applicants who reach the 30/60 month limitations between 3/4/20 and 6/30/20 up to an additional 6 months, or when the declaration of emergency is lifted, whichever is sooner, to accrue their hours. This waiver would help with the workforce surge.	Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20. Expires when declared emergency is lifted.	Board of Psychology	Active
Psych Asst 72 month Limit	California Code of Regulations Section 1391.1(b)	This waiver would allow a psychological assistant to continue their registration, beyond the 72 months limit upon request, and to provide services to clients for up to six months from the expiration date, or when the state of emergency ceases to exist, whichever is sooner. A psychological assistant who has reached the registration limit between 3/4/2020 and 6/30/2020 will qualify for the wavier and can request for such waiver during the state of emergency. This will help with the workforce surge.	Submitted to Director Kirchmeyer on 4/9/2020	Referred to the Board for Delegation. Approved by Board on 4/17/20. Expires when declared emergency is lifted.	Board of Psychology	Active
Face to Face Supervision	California Code of Regulations Sections 1387(b)(4) and 1391.5(b)	This waiver would allow the Board to relax the requirement of face-to-face supervision to a psychological trainee by allowing the one hour face-to-face, direct, individual supervision to be conducted via HIPAA-compliant means from March 16, 2020, until June 30, 2020, or when the state declaration of emergency is lifted, whichever is sooner. The Board would still require that the trainee indicate the type of supervision on the required weekly log and the primary supervisor should verify this information. This waiver would help with the workforce surge.	Submitted to Director Kirchmeyer on 4/9/2020	Approved by DCA on 5/6/20. Waiver extended on 8/31/21 and now expires 10/31/21. The Board has issued a six-month grace period for face-to-face supervision which will allow for HIPAA compliant technology to count towards this requirement. The six-month grace period expires on 9/30/22.	Board of Psychology	Active

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MEMORANDUM

DATE	May 17, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	~~Agenda Item # 6(a)(1) SB 401 (Pan) Psychology: unprofessional conduct: disciplinary action: sexual acts~~

Background:
In early 2019, Senator Pan carried SB 275 to amend Sections 2960 and 2960.1. Given the COVID-19 pandemic and the request from leadership to minimize the bill load, SB 275 was amended and became a bill about Personal Protective Equipment. Consequently, in December 2020, Board staff contacted Senator Pan's office to ask whether he would consider carrying legislation pertaining to this issue. In February of this year, Senator Pan agreed to carry the bill, and introduced SB 401 - Psychology: unprofessional conduct: disciplinary action: sexual acts.

Under current law, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision (discipline) that the Administrative Law Judge (ALJ) recommends to the Board of Psychology (Board) for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances sexual contact (including sexual intercourse), revocation must be the discipline recommended by an ALJ.

Note: Current law defines sexual contact as meaning "the touching of an intimate part of another person." (Business and Professions Code section 728.) Additionally, current law defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female."

The Board proposes adding "sexual behavior" to Section 2960 of the Business and Professions Code (BPC) due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of "sexual contact," which left the Board hamstrung in achieving appropriate discipline for sexual behavior antithetical to the psychotherapist-client relationship. It made it exceedingly difficult to achieve disciplinary terms that matched the egregiousness of the acts.

The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates

the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline. Therefore, this proposal would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the ALJ the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct. Note: this would not change or diminish the Board's adjudicatory discretion as to the final discipline.

Under this proposal, sexual behavior would be defined as "inappropriate contact or communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse. 'Sexual behavior' does not include the provision of appropriate therapeutic interventions relating to sexual issues."
Examples of sexual behaviors include, but are not limited to:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending sexually suggestive or sexually explicit texts (sexting), messages or emails to a client, and
- sending clients photos that include nudity, genitals, or sexually suggestive poses

On 3/19/2021 the Legislative and Regulatory Affairs Committee voted to recommend the Board **Support** SB 401. The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support SB 401 on 4/2/2021.

On 3/22/2021, SB 401 passed out of the Senate Business, Professions, and Economic Development Committee with a vote of 14-0.

On 4/22/2021, SB 401 passed on the Senate Floor on the Consent Calendar (Ayes: 38; Noes: 0) and was ordered to the Assembly.

On 5/25/2021, Board staff was notified that given the bill reduction directive, SB 401 would be a 2-year bill.

Location: Assembly Rules

Status: 6/17/2021 In the Assembly. Re-referred to Com. on RLS. pursuant to Assembly Rule 96.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Support
Attachment B: Senate Floor Analysis
Attachment C: SB 401 (Pan) Bill text

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April 12, 2021

The Honorable Anthony Portantino
Chair, Senate Committee on Appropriations
State Capitol, Room 2206
Sacramento, CA 95814

RE: **SB 401 (Pan) – Psychologist: unprofessional conduct: disciplinary action: sexual acts – SPONSOR**

Dear Senator Portantino:

The Board of Psychology (Board) is pleased to **SPONSOR** SB 401 (Pan). This bill would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the Administrative Law Judge (ALJ) the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct. This amendment would not change or diminish the Board's adjudicatory discretion as to the final discipline.

The Board estimates that minor and absorbable costs might be incurred due to SB 401. The bill would change the terms of the proposed decision by an ALJ but would not change the Board's investigation of the allegations nor the adjudicatory process once an accusation is filed against a licensee. Additionally, the Board has no basis upon which to estimate whether a licensee would be more or less likely to appeal the decision or surrender their license in lieu of revocation.

Pursuant to Business and Professions Code (BPC) Section 2960.1, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision (discipline) that the ALJ recommends to the Board of Psychology (Board) for adoption must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances sexual contact (including sexual intercourse), revocation must be the discipline recommended by an ALJ. Current law defines sexual contact as meaning "the touching of an intimate part of another person." (Business and Professions Code section 728.) Additionally, current law defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female."

The Board believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects.

The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline. Therefore, this proposal would add sexual behavior (inappropriate actions and communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse) with a client or former client to the list of what is considered unprofessional conduct that would give the ALJ the statutory authority in a proposed decision, to include an order of revocation. The proposal also adds clear definitions to the following sexual acts: sexual abuse, sexual behavior, sexual contact, and sexual misconduct.

The Board sponsored SB 401 due to the Board's experiences adjudicating cases involving inappropriate sexual conduct that did not meet the current definition of sexual contact and therefore did not require the ALJ to recommend revoking the license. Under this proposal, sexual behavior would be defined as "inappropriate contact or communication of a sexual nature for the purpose of sexual arousal, gratification, exploitation, or abuse. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues."
Examples of sexual behaviors include, but are not limited to:

- kissing a client,
- touching or exposing oneself inappropriately,
- sending sexually suggestive or sexually explicit texts (sexting), messages or emails to a client, and
- sending clients photos that include nudity, genitals, or sexually suggestive poses

The Board is cognizant that during psychotherapy, and especially during therapeutic interventions related to sexual issues, there will be in-depth discussions and communications of a sexual nature with the client. When these discussions are a part of appropriate and documented therapeutic interventions, these communications would not be considered sexual behavior under SB 401.

The Board believes that inappropriate sexual behavior with a client is sexual misconduct and should be prosecuted and adjudicated as such. SB 401 (Pan) would close a loophole in current law and treat sexual behavior between a psychologist and client as the sexual misconduct it is.

For these reasons, the Board asks for your support of SB 401 (Pan) when it is heard in the Senate Committee on Appropriations. If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (925) 325-0157. Thank you.

Sincerely,

Seyron Foo
President, Board of Psychology

cc: Senator Patricia Bates (Vice Chair)
Members of the Senate Committee on Appropriations
Senator Richard Pan, MD
Samantha Lui, Consultant, Senate Committee on Appropriations
Amanda Richie, Consultant, Senate Republican Caucus

Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

CONSENT

Bill No: SB 401
Author: Pan (D)
Amended: 3/4/21
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 14-0, 3/22/21
AYES: Roth, Melendez, Archuleta, Bates, Becker, Dodd, Eggman, Hurtado, Jones, Leyva, Min, Newman, Ochoa Bogh, Pan

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Psychology: unprofessional conduct: disciplinary action: sexual acts

SOURCE: Board of Psychology

DIGEST: This bill revises and recasts the circumstances under which specified sexual acts constitute unprofessional conduct

ANALYSIS:

Existing law:

1) Requires that protection of the public to be the Board of Psychology's (Board) highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (BPC § 2920.1)

2) Requires any psychotherapist or employer of a psychotherapist who becomes aware through a client that the client had alleged sexual intercourse, sexual behavior, or sexual contact with a previous psychotherapist during the course of a prior treatment to provide a brochure to the client that delineates the rights of, and remedies for, clients who have been involved sexually with their

psychotherapists. Requires the psychotherapist or employer to discuss the brochure with the client. (BPC § 728 (a))

3) Defines, for purposes of the brochure, "sexual contact" as the touching of an intimate part of another person, and "sexual behavior" as inappropriate contact or communication of a sexual nature. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues. (BPC § 728 (c)(2)

4) Authorizes the Board to suspend or revoke the registration or license of any registrant or licensee found guilty of unprofessional conduct, which includes any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychologist, psychological assistant, or registered psychologist. (BPC § 2960 (o))

5) Requires any proposed decision or decision issued under the Psychology Licensing Law that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact with a patient, or with a former patient within two years following termination of therapy, contain an order of revocation. The revocation shall not be stayed by the administrative law judge (ALJ). (BPC § 2960.1)

This bill:

1) Defines for purposes of this bill:

   a) "Sexual abuse" to mean "the touching of an intimate part of a person by force or coercion;

   b) "Sexual behavior" to mean inappropriate physical contact or communication of a sexual nature with a client or a former client for the purposes of sexual arousal, gratification, exploitation, or abuse," but does not include the provision of appropriate therapeutic intervention relating to sexual issues;

   c) "Sexual contact" to mean the touching of an intimate part of a client or a former client; and,

   d) "Sexual misconduct" to mean inappropriate conduct or communication of a sexual nature that is substantially related to the qualifications, functions, or

duties of a psychologist, psychological assistant, or registered psychologist.

2) Clarifies that any act of sexual contact, as defined, including with a patient or with a former patient within two years following termination of therapy, is unprofessional conduct, as specified.

3) States that a proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as define, may contain an order of revocation.

4) Makes other technical and clarifying changes.

Background

Board of Psychology. The Board regulates licensed psychologists, registered psychological assistants, and registered psychologists. Under current law, when an investigation finds that a psychologist had sexual contact with a client (patient or client) or former client within two years of termination of therapy, the proposed decision to impose discipline that the Administrative Law Judge (ALJ) recommends to the Board must include a recommendation for an order of revocation. The Board maintains ultimate adjudicatory discretion over the adoption of the final discipline against a licensee, but current law ensures that in instances of sexual intercourse and sexual contact, revocation must be the discipline recommended by an ALJ.

Current law defines sexual contact as "sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse". Additionally, current law defines an intimate part as "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female".

Under current law, when an investigation finds that there were egregious sexual behaviors between a psychologist and a client during or within two years of termination of therapy, these cases do not count as sexual misconduct and the requirement for the ALJ's proposed to decision to include a recommendation of revocation does not apply. Since the law is not clear on how sexual behaviors should be prosecuted and adjudicated, the Board has historically had to prosecute and adjudicate these cases as boundary violations with a resulting discipline of placing the licensee on probation with different terms and conditions including such terms as continuing education or coursework related to the ethical breach involved in the acts.

In 2019, the Board pursued similar legislation that would have also defined "sexual behavior" as inappropriate contact or communication of a sexual nature – and would have also required an ALJ's proposed decision to include an order of licensure revocation when there is a finding that a licensee of the Board of Psychology has engaged in sexual behavior short of sexual contact with a client during therapy, or within two years of termination of therapy.

Brochure. The DCA produces a consumer brochure entitled *Professional Therapy Never Includes Sex*, which the law requires a psychotherapist to provide to, and discuss with a client if the psychotherapist learns of inappropriate contact between the client and a previous psychotherapist. This brochure was updated in 2018 (AB 2968, Levine, Chapter 778, Statutes of 2018), to define and include "sexual behavior" between a client and a previous psychotherapist. This bill adds to the definition of "sexual behavior," to include that "sexual behavior" be made by the psychotherapist "for the purpose of sexual arousal, gratification, exploitation, or abuse."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 4/20/21)

Board of Psychology (source)

OPPOSITION: (Verified 4/20/21)

None received

ARGUMENTS IN SUPPORT: The Board of Psychology writes that it "believes that sexual behavior in the psychotherapist-client relationship by the licensed professional is one of the most flagrant ethical violations possible, as it violates the duty of care inherent in a therapeutic relationship, abuses the trust of the client, and can create harmful, long-lasting emotional and psychological effects…The Board wants to ensure that egregious sexual behavior with a client, sexual misconduct, and sexual abuse is unprofessional conduct that merits the highest level of discipline…The Board is cognizant that during psychotherapy, and especially during therapeutic interventions related to sexual issues, there will be in-depth discussions and communications of a sexual nature with the client. When these discussions are a part of appropriate and documented therapeutic interventions,

these communications would not be considered sexual behavior under SB 401…The Board believes that inappropriate sexual behavior with a client is sexual misconduct and should be prosecuted and adjudicated as such."

Prepared by: Sarah Mason / B., P. & E.D. /
4/21/21 15:12:15

****** END ******

SB-401 Psychology: unprofessional conduct: disciplinary action: sexual acts.

SECTION 1.

Section 2960 of the Business and Professions Code is amended to read:

2960.

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or ~~registered~~ psychological ~~associate.~~ *assistant.*

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to ~~themselves,~~ *oneself,* any other person, or the public, or to an extent that this use impairs their ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use their license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of their profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(l) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) (1) Any act of sexual abuse or sexual misconduct.

(2) Any act of sexual behavior or sexual contact with a client or former client within two years following termination of therapy.

(3) For purposes of this section, the following definitions apply:

(A) "Sexual abuse" means the touching of an intimate part of a person by force or coercion.

(B) "Sexual behavior" means inappropriate physical contact or communication of a sexual nature with a client or a former client for the purpose of sexual arousal, gratification, exploitation, or abuse. "Sexual behavior" does not include the provision of appropriate therapeutic interventions relating to sexual issues.

(C) "Sexual contact" means the touching of an intimate part of a client or a former client.

~~(o)~~ *(D)* ~~Any act of sexual abuse, or sexual relations with a patient or former patient within two years following termination of therapy, or sexual misconduct~~ *"Sexual misconduct" means inappropriate conduct or communication of a sexual nature* that is substantially related to the qualifications, ~~functions~~ *functions,* or duties of a ~~psychologist~~ *psychologist, psychological assistant,* or registered ~~psychological associate.~~ *psychologist.*

(p) Functioning outside of their particular field or fields of competence as established by their education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

SEC. 2.

Section 2960.1 of the Business and Professions Code is amended to read:

2960.1.

Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains

any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section ~~728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.~~ *2960, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. A proposed or issued decision that contains a finding that the licensee or registrant engaged in an act of sexual abuse, sexual behavior, or sexual misconduct, as those terms are defined in Section 2960, may contain an order of revocation.*

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 17, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 6(b)(1) – AB 32 (Aguiar-Curry) Telehealth

Background:
This bill would require the State Department of Health Care Services to indefinitely continue the telehealth flexibilities put in place during the COVID-19 pandemic state of emergency. The bill would require the department, by January 2022, to convene an advisory group with specified membership to provide input to the department on the development of a revised Medi-Cal telehealth policy that promotes specified principles. The bill would require the department, by December 2024, to complete an evaluation to assess the benefits of telehealth in Medi-Cal, including an analysis of improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth. The bill would require the department to report its findings and recommendations from the evaluation to the appropriate policy and fiscal committees of the Legislature no later than July 1, 2025.

On 3/19/2021, the Legislative and Regulatory Affairs Committee voted to recommend the Board take a **Support** position on AB 32 (Aguiar-Curry).

On 4/2/2021, the Board adopted the Legislative and Regulatory Affairs Committee's recommendation to **Support** AB 32 (Aguiar-Curry).

Location: Senate Health

Status: 7/8/2021. Set for hearing in Senate Health on 7/14/2021. Hearing canceled at the request of the author.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: Board Letter of Support
Attachment B: Senate Health Committee Analysis
Attachment C: AB 32 (Aguiar-Curry) Bill Text

California Board of PSYCHOLOGY

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July 1, 2021

The Honorable Richard Pan
Chair, Senate Committee on Health
State Capitol, Room 2191
Sacramento, CA 95814

RE: **AB 32 (Aguiar-Curry) – Telehealth - SUPPORT**

Dear Senator Pan:

The Board of Psychology protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession.

At its April 2, 2021 meeting, the Board of Psychology (Board) adopted a **SUPPORT** position on AB 32 (Aguiar-Curry). This bill would require the State Department of Health Care Services to indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic state of emergency. The telehealth flexibilities implemented during the COVID-19 pandemic have increased access to care and we applaud these efforts.

The Board asks for your support of AB 32 (Aguiar-Curry) when it is heard in the Senate Committee on Health. If you have any questions or concerns, please feel free to contact the Board's Central Services Manager, Jason Glasspiegel, at (916) 574-7137 or Jason.glasspiegel@dca.ca.gov. Thank you.

Sincerely,

Seyron Foo
President, Board of Psychology

cc: Senator Melissa Melendez (Vice Chair)
Members of the Senate Committee on Health
Melanie Moreno, Staff Director, Senate Committee on Health
Senate Republican Caucus

SENATE COMMITTEE ON HEALTH
Senator Dr. Richard Pan, Chair

BILL NO:	AB 32
AUTHOR:	Aguiar-Curry
VERSION:	May 24, 2021
HEARING DATE:	July 14, 2021
CONSULTANT:	Teri Boughton

SUBJECT: Telehealth

SUMMARY: Expands the definition of telehealth to include telephone and other virtual communication. Requires medical groups delegated by health plans to comply with telehealth payment parity. Extends telehealth payment parity to Medi-Cal managed care and allows remote eligibility determinations, enrollment, and recertification for Medi-Cal and specified Medi-Cal programs. Requires the Department of Health Care Services to convene a telehealth policy advisory committee and conduct an evaluation of the benefits of telehealth. Makes other policy changes related to telehealth reimbursement for federally qualified health centers, rural health centers and other Medi-Cal enrolled clinics.

Existing law:

1) Requires before the delivery of health care via telehealth, the health care provider initiating the use of telehealth to inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health, and requires the consent to be documented. [BPC §2290.5]

2) Defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers. [BPC §2290.5]

3) Defines "Synchronous interaction" as a real-time interaction between a patient and a health care provider located at a distant site. [BPC §2290.5]

4) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance (CDI) to regulate health and other insurance; and, the Department of Health Care Services (DHCS) to administer the Medi-Cal program. [HSC §1340, et seq., INS §106, et seq., and WIC §14000, et seq.]

5) Requires a contract between a health plan/health insurer and a health care provider to specify that the health plan/health insurer reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health care plan/insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment (referred to as telehealth payment parity requirements). [HSC §1374.14 and INS §10123.855]

6) Establishes the Health Care Providers' Bill of Rights, which specifies specified contract terms between health plans/insurers and health care providers, including that a plan/dental insurer does not have the authority to change a material term of the contract, unless the change has first been negotiated and agreed to by the provider and the plan/dental insurer, as specified. [HSC §1375.7 and INS §10133.65]

7) Exempts counties contracting with DHCS for the Medi-Cal managed care expansion to rural counties from the Knox-Keene Act. [WIC §14087.95]

8) Requires a FQHC or RHC "visit" to mean a face-to-face encounter between an FQHC or RHC patient and a physician, physician assistant, nurse practitioner, certified nurse-midwife, clinical psychologist, licensed clinical social worker, or a visiting nurse, and other providers, as specified. [WIC §14132.100]

9) Prohibits face-to-face contact or a patient's physical presence on the premises to be required for services provided by an enrolled community clinic to a Medi-Cal beneficiary during or immediately following a state of emergency, as described in existing law.[WIC §14132.723]

10) Requires the following services to be reimbursable when provided by an enrolled community clinic, an enrolled FFS Medi-Cal program provider, clinic, or facility approved by DHCS during or immediately following a state of emergency for any dates of service on or after the date that the department obtains federal approvals and federal matching funds to implement these provisions:
    a) Telehealth services, including services provided by the enrolled community clinic or approved enrolled provider, clinic, or facility at a distant site location, whether on or off the premises, to a Medi-Cal beneficiary located at an originating site, which includes the beneficiary's home, temporary shelter, or any other location, if the services are provided somewhere located within the boundaries of the proclamation declaring the state of emergency.
    b) Telephonic services.
    c) Covered benefit services that are otherwise reimbursable to an FQHC or RHC, but that are provided somewhere off the premises, including, but not limited to, at a temporary shelter, a Medi-Cal beneficiary's home, or any location other than the premises, but within the boundaries of the proclamation declaring the state of emergency. [WIC §14132.723]

11) Requires DHCS to ensure its reimbursement policies reflect the intent of the Legislature to authorize reimbursement for telehealth services appropriately provided by an enrolled community clinic, or, if approved by DHCS, by an enrolled FFS Medi-Cal provider, clinic, or facility, respectively, during or immediately following a state of emergency. This does not limit reimbursement for, or coverage of, or reduce access to, services provided through telehealth on or before the enactment of this section. [WIC §14132.723]

This bill:

1) Revises the definition of "synchronous interaction" to include, but not be limited to, audio-video, audio only, such as telephone, and other virtual communication.

2) Requires if a health plan/health insurer delegates responsibility to a contracted entity, including a medical group or independent practice association, then the delegated entity must

comply with telehealth payment parity requirements pursuant to existing law.

3) Requires the obligation of a health plan/health insurer to comply with telehealth payment parity requirements pursuant to existing law not to be waived if the plan/insurer delegates services or activities that the plan/insurer is required to perform to its provider or another contracting entity. Requires a plan's/insurer's implementation to be consistent with the requirements of the Health Care Providers' Bill of Rights, and a material change in the obligations of a plan's/insurer's contracting network providers to be considered a material change to the provider contract, as specified.

4) Requires a county contracting with DHCS for the Medi-Cal managed care expansion to rural counties, and a subcontractor of a county contracting to provide Medi-Cal services, to comply with telehealth payment parity requirements.

5) Permits for the Family Planning, Access, Care, and Treatment, Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs, a provider to enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program.

6) Permits for the Medi-Cal Minor Consent program, a county eligibility worker to determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone.

7) Permits DHCS to develop program policies and systems to support implementation of remote eligibility determination, enrollment, and recertification.

8) Permits DHCS to implement, interpret, or make specific this bill by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

9) Defines "enrolled clinic" as a licensed clinic, intermittent clinic exempt from licensure, a hospital or nonhospital-based clinic operated by the state or any of its political subdivisions, including the University of California, or a city, county, city and county, or hospital authority, and a tribal clinic exempt from licensure, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in federal law.

10) Requires health care services furnished by a Medi-Cal enrolled clinic through telehealth to be reimbursed by Medi-Cal on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person.

11) Prohibits DHCS from restricting the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth and having policies that require all of the clinical elements of a service to be met as a condition of reimbursement. Includes as prohibited restrictions all of the following:

    a) Requirements for face-to-face contact between an enrolled clinic provider and a patient.

    b) Requirements for a patient's or provider's physical presence at the enrolled clinic or any other location.

c) Requirements for prior in-person contacts between the enrolled clinic and a patient.

d) Requirements for documentation of a barrier to an in-person visit or a special need for a telehealth visit.

e) Policies, including reimbursement policies, that impose more stringent requirements on telehealth services than equivalent services furnished in person.

f) Limitations on the means or technologies through which telehealth services are furnished. This paragraph does not prohibit policies that require compliance with applicable federal and state health information privacy and security laws.

12) Includes in the definition of "visit" for purposes of Medi-Cal reimbursement of FQHCs and RHCs a telehealth encounter to the same extent as an in-person encounter.

13) Requires Medi-Cal managed care plans to comply with telehealth payment parity requirements. Prohibits Medi-Cal managed care plans from being required to pay FQHCs and RHCs the same amount for audio-only telehealth visits as equivalent in-person visits on or after January 1, 2025. Applies this to the extent consistent with federal Medicaid requirements that a managed care plan provide payment for services furnished by a FQHC and RHC that is not less than the level and amount of payment the managed care plan would make for the services if the services were furnished by a provider that is not a FQHC or RHC.

14) Requires DHCS to seek any necessary federal approvals and obtain federal financial participation (FFP) in implementing this bill, and this bill to be implemented only to the extent that any necessary federal approvals are obtained and FFP is available and not otherwise jeopardized.

15) Requires DHCS to reimburse each FQHC and RHC for health care services furnished through audio-only telehealth, including telephone, at the applicable prospective payment system per-visit rate, consistent with this bill, until the earlier of January 1, 2025, or the date that the FQHC or RHC elects to participate in an alternative payment methodology (APM) described 23) below.

16) Requires mental health services that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver, furnished through audio-only telehealth, to continue to be reimbursed at the applicable prospective payment system per-visit rate indefinitely, except if the FQHC or RHC elects an APM that covers those services.

17) Requires by January 2022, DHCS to convene an advisory group to provide input to DHCS on the development of a revised Medi-Cal telehealth policy that promotes all of the following principles:
    a) Telehealth shall be used as a means to promote timely and patient-centered access to health care.
    b) Patients, in conjunction with their providers, shall be offered their choice of service delivery mode. Patients shall retain the right to receive health care in person.
    c) Confidentiality and security of patient information shall be protected.

d) Usual standard of care requirements shall apply to services provided via telehealth, including quality, safety, and clinical effectiveness.

18) Requires the advisory group to include representatives from community health centers, designated public hospitals, Medi-Cal managed care plans, consumer groups, labor organizations, behavioral health providers, counties, health care districts, and other Medi-Cal providers. Requires DHCS to utilize any potential federal funding or other nonstate general funding that may be available to support this effort.

19) Requires DHCS to consider disparities in the utilization of, and access to, telehealth, and to support patients and providers in increasing access to the technologies needed to use telehealth.

20) Requires when the care provided during a telehealth visit is commensurate with what would have been provided in person, payment to also be commensurate.

21) Requires by July 2024, DHCS to complete an evaluation to assess the benefits of telehealth in Medi-Cal. Requires the evaluation to analyze improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth, and DHCS to utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this effort.

22) Requires DHCS to provide data and information to the evaluator, as appropriate, and report its findings and recommendations on the evaluation to the appropriate policy and fiscal committees of the Legislature no later than October 31, 2024.

23) Requires DHCS, in consultation with affected stakeholders, including, but not limited to, the California Association of Public Hospitals and Health Systems and the California Primary Care Association, to develop one or more federally permissible APM, consistent with federal law, that FQHCs and RHCs may elect to participate in.

24) Requires the APMs to be designed to enable the continued provision of high-quality health care, while furthering the goals of the Medi-Cal program to improve access and equity, and incentivize and support clinic infrastructure improvements.

25) Requires to the extent that an APM includes a separate per-visit payment rate for audio-only telehealth visits, that payment rate to be less than the rate the FQHC and RHC receives for an in-person visit. Exempts mental health services furnished through audio-only telehealth that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver.

26) Requires DHCS to submit and seek federal approval of the state plan amendment necessary for the implementation to be effective no later than January 1, 2025, and this to be implemented only to the extent that any necessary federal approvals are obtained and FFP is available and not otherwise jeopardized.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

1) The California Health Benefits Review Program (CHBRP) states that some telehealth services replace existing in-person visits, while others are new supplemental visits that would

not have taken place in the absence of telehealth coverage. As the supplemental visits increase overall utilization of health care services, this bill increases health care costs as follows:

a) Total state costs as follows:

   i) $136.5 million total funds ($49 million General Fund (GF)) to Medi-Cal managed care. $24.5 million of this total funds cost ($9 million GF) is attributable to the increase in coverage and payment parity requirements for telehealth services provided by FQHCs and RHCs. The General Fund calculation assumes a FFP, or federal matching percentage of 64%, the same as that calculated for the Remote Patient Monitoring proposal in the Medi-Cal November 2020 Local Assistance Estimate.

   ii) $42.6 million ($15 million GF) for services delivered to beneficiaries enrolled in Medi-Cal County Organized Health Systems and Medi-Cal fee-for-service (FFS).

   iii) $1.1 million to The California Public Employees' Retirement System (CalPERS) for premium increases, $624,000 of which would be borne by the General Fund, federal funds and various special funds, with the remainder borne by local funds.

b) Total non-state costs as follows:

   i) $39.6 million in commercial health care premium increases paid by non-CalPERS employers.

   ii) $21.9 million in premium increases, and $41.7 million in increased cost-sharing, paid by individuals and employees.

c) CHBRP does not identify cost offsets or savings as a result of this bill because it requires payment parity with in-person services and results in increased utilization. CHBRP notes it is unlikely the actual cost of staff, technology and resources used to deliver services via telehealth are less expensive than in-person care.

2) There is a significant amount of uncertainty related to cost estimates. Costs may be higher or lower than estimated by CHBRP. In particular, DHCS estimates potential costs due to the payment parity requirement are indeterminate but could be as high as $300 million total funds annually (about $100 million GF annually), higher than CHBRP estimates.

3) Administrative costs to DHCS to develop an alternative payment methodology for clinics, likely in the hundreds of thousands of dollars (GF and federal funds). To implement SB 147 (Hernandez), Chapter 760, Statutes of 2015, a prior bill that authorized a pilot project to deploy an alternative payment methodology for FQHCs, DHCS requested three-year limited-term positions and spending authority of $240,000 per year for three years and a $300,000 contract for evaluation

4) One-time staff or contract costs to DHCS of $50,000 (GF and federal funds) to support facilitation of an advisory board to provide input to telehealth policies. Costs would be higher if the facilitator was asked to draft recommendations or policies.

5) Unknown potential Medi-Cal costs for increased number of beneficiaries associated with the option for remote eligibility determinations and recertifications, which should reduce the frictional costs of gaining and retaining Medi-Cal eligibility (GF and federal funds)

PRIOR VOTES:

Assembly Floor:	78 - 0
Assembly Appropriations Committee:	16 - 0
Assembly Health Committee:	13 - 0

COMMENTS:

1) *Author's statement.* According to the author, the COVID-19 pandemic has made abundantly clear what we have known for decades – our most vulnerable and marginalized communities continue to struggle for affordable and reliable access to healthcare. This bill will extend the telehealth flexibilities that were put in place during the COVID-19 pandemic, which have been vital to ensuring that health centers can continue providing services. More specifically this bill will ensure that telehealth, including telephonic and video care, are available to patients regardless of who they are, their insurance, what language they speak, or the barriers they may face, such as geographic, transportation, childcare, or the ability to take time off from work.

2) *COVID-19 emergency.* On March 11, 2020 the novel Coronavirus (COVID-19) was declared a global pandemic which set in motion declared public health emergencies across the United States. The COVID-19 outbreak was declared a national emergency on March 13, 2020, and was previously declared a nationwide public health emergency on January 31, 2020 (retroactive to January 27, 2020). On March 16, 2020 Governor Gavin Newsom announced that the state asked federal officials to make it easier for California to quickly and effectively provide care to about 13 million Medi-Cal beneficiaries as California works to protect the public from COVID-19. Specifically, the letter requested to ease certain federal rules governing doctors and other health care providers who treat people covered through Medi-Cal, and loosen rules regarding the use of telehealth and where care can be provided, making it simpler to protect seniors and other populations at high risk for harm if exposed to the virus. The DHCS letter to the federal Centers for Medicare & Medicaid Services (CMS) asked that the rules be waived under Section 1135 of the Social Security Act. The March 13th declared national emergency over COVID-19 allowed DHCS to seek the waiver. Under this authority and also through a California Medicaid State Plan amendment (SPA # 20-0024) was approved by CMS in May of 2020.

3) *DHCS Telehealth Policy.* According to DHCS, temporary policy changes during the COVID-19 public health emergency include:
   a) Expanding the ability for providers to render all applicable Medi-Cal services that can be appropriately provided via telehealth modalities, including those historically not identified or regularly provided via telehealth such as home and community-based services, Local Education Agency and Targeted Case Management services;
   b) Allowing most telehealth modalities to be provided for new and established patients
   c) Allowing many covered services to be provided via telephone/audio-only for the first time;
   d) Allowing payment parity between services provided in-person face-to-face, by synchronous telehealth, and by telephonic/audio only when the services met the

requirements of the billing code by various provider types, including FQHCs and RHCs in both FFS and managed care;

e) Waiving site limitations for both providers and patients for FQHC and RHCs, which allows providers and/or beneficiaries to be in locations outside of the clinic to render and/or receive care, respectively; and,

f) Allowing for expanded access to telehealth through non-public technology platforms. This "good faith" exemption was granted by the federal Office for Civil Rights, which would otherwise not be allowed under federal Health Insurance Portability and Accountability Act requirements.

Both physical and behavioral health providers responded rapidly to the COVID-19 public health emergency and widely pivoted to provide services via synchronous telehealth and telephonic/audio-only modalities. While telehealth has been available for decades as a promising solution to reduce barriers to care, utilization and adoption of these modalities has been historically slow. The COVID-19 public health emergency has led to the adoption of the use of telehealth modalities at an accelerated pace that had been unthinkable prior to the public health emergency. Providers quickly learned how to deliver a variety of services through new technology platforms, and Medi-Cal managed care plans learned how to reimburse those services

4) *California Health Benefits Review Program (CHBRP) analysis.* AB 1996 (Thomson, Chapter 795, Statutes of 2002) requests the University of California to assess legislation proposing a mandated benefit or service and prepare a written analysis with relevant data on the medical, economic, and public health impacts of proposed health plan and health insurance benefit mandate legislation. CHBRP was created in response to AB 1996, and reviewed this bill. Key findings include:

a) *Coverage impacts and enrollees covered*. At baseline, 100% of enrollees with commercial or CalPERS health insurance that would be subject to this bill have coverage for live video telehealth services, whereas 80.4% of enrollees have coverage for telephone services. Approximately 7% of enrollees in CalPERS HMOs do not have benefit coverage for telehealth delivered via telephone. This bill would require commercial and CalPERS health plans and policies to provide new benefit coverage for telephone telehealth services for 19.6% of enrollees. At baseline, 100% of Medi-Cal managed care beneficiaries have existing benefit coverage for live video services. However, 73.5% of beneficiaries in DMHC-regulated Medi-Cal managed care plans have coverage for synchronous telephone services. This bill would require Medi-Cal managed care plans, County Organized Health Systems (COHS), and the FFS program to provide new benefit coverage for synchronous telephone services for 26.5% of beneficiaries.

b) *Medical effectiveness.* Most studies pertinent to this analysis examine the use of telehealth modalities as a substitute for in-person care. In these cases, the relevant studies evaluated whether care provided via these technologies resulted in equal or better outcomes and processes of care than care delivered in person, and whether use of these technologies improved access to care. Some studies assessed the effects of telehealth as a supplement to in-person care; these studies evaluated whether adding these technologies improves processes of care and health outcomes relative to receiving in-person care alone. To examine whether services delivered via telehealth are of the same quality as in-person services, CHBRP examined three sets of outcomes: 1) health outcomes, including both physiological measures and patient-reported outcomes; 2) process of care outcomes,

including treatment adherence and accuracy of diagnoses and treatment plans; and 3) access to care and utilization outcomes, such as wait time for specialty care, or number of outpatient visits, emergency department visits, and hospitalizations. CHBRP found that evidence regarding whether telehealth modalities and services result in equal or better outcomes than care delivered in person is mixed, depending on the disease and condition, telehealth modality, and type of outcome studied: health outcomes, process of care, or use of other services. Because telehealth studies have only focused on a limited number of diseases and conditions, the findings may not be generalizable outside of the specific diseases and conditions studied.

i) For Live Video: There is preponderance of evidence that care delivered by live video is at least as effective as in-person care for health outcomes for several conditions and health care settings, including infectious disease, obesity, diabetes, and abortion. There is clear and convincing evidence that mental health services for attention deficit/hyperactivity disorder (ADHD) depression, and posttraumatic stress disorder (PTSD) delivered by live video are at least as effective as in-person care for processes of care and health outcomes. There is clear and convincing evidence that dermatology diagnoses made via live video are as accurate as diagnoses made during in-person visits. There is a preponderance of evidence that scores on neurocognitive tests administered via live video are similar to scores obtained when tests are administered in person. Studies have also found diagnostic concordance between live video and in-person examination for shoulder disorders, otolaryngology, and fetal alcohol syndrome. There is a limited evidence that care delivered by live video is at least as effective as in-person care for access to care and utilization.
ii) For Telephone: For the diseases and conditions studied, the preponderance of evidence from studies of the effect of telephone consultations suggests that telephone consultations were at least as effective as in-person consultations on health outcomes. For the diseases and conditions studied, findings from studies of the effect of telephone consultations on processes of care and access to care and utilization are inconsistent; therefore, the evidence that medical care provided by telephone compared to medical care provided in person is inconclusive.
iii) Comparing Live Video to Telephone: There is a preponderance of evidence that behavioral health services delivered by live video are comparable to services delivered by telephone consultation on health outcomes. CHBRP found no studies that compared live video to telephone consultation on outcomes for processes of care and access to care and utilization of health services.

c) *Utilization*. Of the new telehealth visits provided postmandate, CHBRP estimates that supplemental services will represent 50% of additional telehealth services and 50% will replace in-person care due to the ongoing effects of the pandemic and reticence by patients to seek in-person care.

d) *Medi-Cal.* In addition to the estimated $136,534,000 increase in premiums for the 8.05 million Medi-Cal beneficiaries enrolled in DMHC-regulated Medi-Cal managed care plans, a proportional increase of $42.62 million is estimated to occur for the beneficiaries enrolled in COHS managed care and the FFS program. CHBRP assumes the two populations to be relatively similar and to have relatively similar benefit coverage. Of the $136,534,000 increase in Medi-Cal managed care expenditures, $134,005,000 would be due to parity requirements and $2,529,000 would be due to new coverage of telehealth services. Additionally, of the $136,534,000 increase in expenditures, $24,450,000

(0.10%) would be due to the increase in coverage and parity requirements for telehealth services provided by FQHCs/RHCs.

e) *Impact on expenditures*. This bill would increase total net annual expenditures by $240,827,000, or 0.18%, for enrollees with DMHC-regulated plans, CDI-regulated policies, and DMHC-regulated Medi-Cal managed care plans. This is due to an increase in total health insurance premiums paid by DMHC-regulated large-group plans ($0.29 per member per month [PMPM]), small-group plans ($0.77 PMPM), individual market plans ($0.20 PMPM), CalPERS HMOs ($0.13 PMPM), Medi-Cal managed care plans for age under 65 years ($1.42 PMPM), Medi-Cal managed care for ages 65 and over ($1.41 PMPM), CDI-regulated large-group ($1.32 PMPM), and CDI-regulated individual market ($0.95 PMPM) policies. The largest increases in expenditures were in Medi-Cal managed care for age under 65 (0.63%), Medi-Cal managed care for age 65+ (0.30%), and CDI-regulated large group (0.26%). CHBRP does not project any cost offsets or savings in expenditures that would result because of the enactment of provisions in this bill.

f) *Public health*. This bill would increase access to health care by reducing transportation barriers to in-person care by covering telephone (audio only) visits. This bill would also increase health care options and reduce travel costs and travel time for those enrollees who use the newly covered telephonic visits or reimbursable live video visits with FQHC/RHC providers. These enrollees and Medi-Cal beneficiaries may have equivalent or better outcomes (compared with in-person care) because they would no longer delay or avoid in-person visits because of travel difficulties. For those rural (and some urban) enrollees and Medi-Cal beneficiaries who have no broadband connectivity (due to lack of infrastructure in remote areas or cost of service or devices), a landline telephone would remain a viable telehealth modality, resulting in equivalent or better outcomes (compared with in-person care).

5) *FQHC and RHC APM Pilot*. SB 147 (Hernandez, Chapter 760, Statutes of 2015) authorized a three-year APM pilot program for county and community-based FQHCs willing to participate in the pilot program. The purpose of SB 147 to incentivize delivery system and practice transformation at FQHCs through flexibilities available under a capitated model which would move the clinics away from the traditional volume-based, PPS, to a payment methodology that better aligns the evolving financing and delivery of health services. The proposed APM structure provides participating FQHCs the flexibility to deliver care in the most effective manner, without having to worry about the more restrictive traditional billing structure that is in place today. With the flexibility of payment reform, FQHCs will begin to provide and/or expand upon the innovative forms of care which are not reimbursed under traditional volume-based PPS. This pilot has not been implemented.

6) *Budget Act of 2021-22*. As part of the budget, DHCS requested trailer bill language to extend permanent flexibilities for the delivery of certain Medi-Cal benefits through telehealth, telephonic/audio-only, remote patient monitoring, and other virtual communication modalities, to establish a rate for audio-only telehealth services at 65% of the FFS rate, and a comparable alternative to the prospective payment system rates for clinics to maintain an incentive for in-person care. This issue was rejected by the Senate Budget Health and Human Services Subcommittee #3 and instead the subcommittee adopted modified placeholder trailer bill language to align with the provisions of this bill.

7) *Related legislation.* AB 133 (Assembly Committee on Budget), *pending in the Senate Committee on Budget and Fiscal Review*, and SB 133 (Senate Committee on Budget and Fiscal Review), *pending in the Assembly Committee on Budget*, are omnibus health trailer bills, that include a requirement that DHCS seek federal approvals to extend the Public Health Emergency-approved flexibilities related to the delivery and reimbursement of services via telehealth modalities until December 31, 2022, and convene an advisory group to provide recommendations to inform DHCS on establishing and adopting billing and utilization management protocols for telehealth modalities. AB 133/SB 133 also authorize DHCS to enter into contracts or amend existing contracts, for purposes of implementing these provisions and exempts those contracts from specified provisions of law.

8) *Prior legislation.* AB 2164 (Robert Rivas of 2020) would have required a "visit" for purposes of reimbursement by Medi-Cal to include a visit by an FQHC/RHC patient and a health care provider using telehealth through synchronous interaction (face to face over video) or asynchronous store and forward (the sending of images such as x-rays to a health care provider), and would have authorized a FQHCs and RHCs to establish a patient, located within the federal designated service area of the FQHC and RHC, through synchronous interaction or asynchronous store and forward as of the date of service. Would have permitted DHCS to implement, interpret, and make specific the Medi-Cal telehealth provisions of this bill by means of all-county letters, provider bulletins, and similar instructions, and required the adoption of regulations by July 1, 2022. AB 2164 would have sunset 180 days after the state of emergency for the COVID-19 pandemic has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature. AB 2164 was vetoed by the Governor. In his veto message, the Governor writes:

> *While I am supportive of utilizing telehealth to increase access to primary and specialty care services, DHCS is currently in the process of evaluating its global telehealth policy to determine what temporary flexibilities should be extended beyond the COVID-19 pandemic. Changes to FQHC and RHC telehealth is better considered within the context of a global assessment around telehealth in the state of California. Further, the cost of these changes is also more appropriately considered alongside other policy changes in the budget process next year.*

AB 744 (Aguiar-Curry, Chapter 867, Statutes of 2019) requires health care contracts after January 1, 2021, to specify that the health plan or insurer is required to cover and reimburse diagnosis, consultation, or treatment delivered through telehealth on the same basis and to the same extent that the plan or insurer is responsible for coverage and reimbursement for the same service provided through in-person diagnosis, consultation, or treatment. Revises Medi-Cal telehealth requirements so that the law prohibits face-to-face contact between a health care provider and a Medi-Cal patient for health care services that are appropriately provided by store and forward, to the extent that FFP is available, subject to billing and reimbursement policies developed by DHCS.

AB 1494 (Aquiar-Curry, Chapter 829, Statutes of 2019) prohibits face-to-face contact or a patient's physical presence on the premises of an enrolled community clinic, as specified, to be required for services provided to a Medi-Cal beneficiary during or immediately following a state of emergency. Requires DHCS on or before July 1, 2020, to issue and publish on its Website guidance to facilitate reimbursement for services provided by enrolled community clinics to a Medi-Cal beneficiary during or immediately following a state of emergency.

AB 1174 (Bocanegra, Chapter 662, Statutes of 2014) expands the scope of practice for a registered dental assistant in extended functions, registered dental hygienist, and registered dental hygienist in alternative practice to better enable the practice of teledentistry in accordance with the findings of a Health Workforce Pilot Program, and authorizes Medi-Cal payments for teledentistry services provided to individuals participating in the Medi-Cal program.

AB 415 (Logue, Chapter 547, Statutes of 2011) establishes the Telehealth Advancement Act of 2011 to revise and update existing law to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal Program.

6) *Support if amended.* Health Access California writes that while they support ongoing expansion of telehealth modalities, they have emphasized the need to proceed in a manner that centers consumer interests with a data-driven approach. Health Access California suggests additional amendments as follow to ensure consumer choice is not sacrificed as a result of telehealth expansions, and to ensure strong data evaluation requirements:
   a) Add language to Health and Safety Code and Insurance Code to specify that consumers may always opt for in-person care, even if previously that elected to receive services via telehealth.
   b) Apply evaluation requirements for telehealth services delivered to consumers in the commercial market as well as those in Medi-Cal managed care plans, and strengthen requirements to include full evaluation of the impact telehealth has had on delivery, access, and quality of healthcare, including health outcomes, and how telehealth has impact diverse communities.

   The Center for Autism and Related Disorders (CARD) writes existing law allows for telehealth to be provided by qualified autism providers and qualified autism service professionals. However, during the Public Health Emergency, flexibilities have been granted to allow services by qualified autism service paraprofessionals who often provide direct one-on-one treatment, and we respectfully urge an amendment to continue the flexibility that permits qualified autism service paraprofessionals to deliver services via telehealth.

   The Los Angeles Unified School District Los Angeles Unified seeks an amendment that would clarify that school districts can also take advantage of the policy this bill seeks to accomplish.

7) *Support*. Essential Access Health, a cosponsor of this bill writes, telehealth has become a crucial pathway for patients to access care during the pandemic and will remain so beyond the public health emergency period. Access to telehealth decreases barriers, increases access to care for patients, and reduces no-show rates significantly. Telephonic care in particular has become a reliable modality of care. Recent surveys conducted by the California HealthCare Foundation found that most patients would like the option of a telephone or video visit and would likely choose a phone or video visit over an in-person visit whenever possible. Essential Access Health conducted a survey of Title X provider network last fall and respondents reported that on average, nearly 60% of their remote sexual and reproductive health visits were conducted by telephone. A majority said that more than half of their patients are expected to choose telehealth visits over in-person appointments by April 2021. Over 40% of California teen respondents reported that they would prefer telehealth visits by phone. Nearly 60% of California teen respondents indicated they would be much more or somewhat more likely to get health care using telehealth than if they had to go to a clinic.

The California Medical Association, another cosponsor, writes the provisions of this bill guarantee that Medi-Cal patients will have the same access to telehealth services as commercially-insured patients. This is a key change, as Medi-Cal patients are most likely to have transportation challenges, child care issues, or other challenges that make it difficult to get to an in-person visit. California Health+ Advocates, another cosponsor, writes community health centers are leveraging telehealth technology to improve access to care and meet increased patient demands. Telehealth has been an important way for patients to access care during the pandemic and it will be critical to providing post-pandemic care, and telephonic (audio only) care has become a reliable modality of care. Another sponsor, Planned Parenthood, writes centers now provide about 25% of their visits through telehealth – which includes both video and audio-only visits. The majority of Planned Parenthood's telehealth visits are for birth control, sexually transmitted infections screening and treatment, pregnancy counselling, gender affirming care, PrEP and PEP follow-ups, and UTI screenings. All visits, regardless of modality, meet the time, medical decision-making, and documentation requirements of billing codes to be reimbursed. The California Public Hospitals and Health Systems, another cosponsor, writes Telehealth has opened up new options for patients who struggle with traditional visits, thereby expanding access to ensure their needs are met and helping to prevent the devastating consequences of delayed and avoided care. Increasing take-up of primary, preventive and chronic disease care via telehealth will likely result in better health outcomes and lower total costs to Medi-Cal over the long term. Telehealth is not a substitute for all types of in person care and all situations, but when it is appropriate, we must ensure the option is available. California's public health care systems are successfully using telehealth to provide a broad array of care, including primary and specialty care, chronic disease management, bedside consults for patients in the hospital, behavioral health care, and the support of care coordinators and social workers.

9) *Concerns*. The Service Employees International Union, California (SEIU) writes that the COVID-19 pandemic has disrupted our healthcare delivery system, and telehealth is an important modality for the delivery of healthcare during the emergency and moving forward. As this effort moves forward, it is vital that California understands the impact of this modality on the workforce, just like the introduction of other invocations like x-rays, election health records or cardiac catheterization. SEIU requests that the evaluation process described in this bill are expanded to include the impact on the healthcare workforce. Below is sample of language that expands the evaluation section of this bill, to help understand the impact of telehealth on the workforce.

   The impact of telehealth on the healthcare workforce, including types of positions or roles, expansion or reduction in types of workers, and skills or certifications that are needed to prepare workers and providers to effectively provide care through telehealth. Best telehealth workforce practices or models for delivering high-quality care as they relate to outcomes in the bill.

   The current language of this bill creates a stakeholder process that calls out employers to develop APMs for payment of telehealth services. The types of services and level of reimbursement have a significant impact on SEIU members, and that process would be incomplete without their perspective. If this provision moves forward, SEIU requests to be included in that stakeholder process.

10) *Opposition*. The California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America's Health Insurance Plans write to oppose this bill because it is one of the fourteen health insurance mandate will increase costs, reduce choice and competition, and further incent some employers and individuals to avoid state

regulation by seeking alternative coverage options. Large employers, unions, small businesses and hard-working families value their ability to shop for the right health plan, at the right price, that best fits their needs. Benefit mandates impose a one-size-fits-all approach to medical care and benefit design driven by the Legislature, rather than consumer choice. The California Chamber of Commerce (Chamber) believes this bill's current definition of telehealth will increase the cost of care delivery since it places no parameters on the telephone-only parity provision. The Chamber indicates a clear definition is needed for exactly which virtual/remote services will be placed at parity with in-person presentations and to what extent they will be at parity, and states without this guardrail, the bill could potentially place even the simplest and shortest patient-provider telephone interactions at parity with in-person presentations.

11) *Policy comment*. Policy comment.
12) *Amendments.*
    a) The amendments to the Insurance Code are unnecessary as health insurers do not delegate services to medical groups and other entities.
    b) Does the committee wish to adopt amendments requested by SEIU, Health Access California, CARD or Los Angeles Unified?

SUPPORT AND OPPOSITION:

Support: California Association of Public Hospitals and Health Systems (cosponsor)
California Medical Association (cosponsor)
CommunityHealth+ Advocates (cosponsor)
Essential Access Health (cosponsor)
Planned Parenthood Affiliates of California (cosponsor)
AARP California
AIDS Healthcare Foundation
Alameda Health Consortium
Alameda Health System
All Inclusive Community Health Center
Alliance Medical Center
AltaMed Health Services
American College of Obstetricians and Gynecologists District IX
Ampla Health
APLA Health
Arnold & Associates
Arroyo Vista Family Health Center
Asian Health Services
Asian Pacific Health Care Venture, Inc.
Association for Clinical Oncology
Association of California Healthcare Districts
Bartz-Altadonna Community Health Centers
Behavioral Health Services, Inc.
Borrego Health
Business & Professional Women of Nevada County
California Academy of Family Physicians
California Association of Health Facilities
California Association of Social Rehabilitation Agencies
California Behavioral Health Planning Council

California Board of Psychology
California Chapter of the American College of Emergency Physicians
California Chronic Care Coalition
California Commission on Aging
California Commission on the Status of Women and Girls
California Consortium for Urban Indian Health
California Dialysis Council
California Hospital Association
California Primary Care Association
California Podiatric Medical Association
California Psychological Association
California School-based Health Alliance
California Solar & Storage Association
California State Association of Psychiatrists
California Telehealth Network
California Telehealth Policy Coalition
Center for Family Health & Education
Central California Partnership for Health
Central Valley Health Network
ChapCare Medical and Dental Health Center
CHE Behavioral Services
Children Now
Children's Specialty Care Coalition
Chinatown Service Center
Citizens for Choice
City of San Francisco
Coalition of Orange County Community Health Centers
CommuniCare Health Centers
Community Clinic Association of Los Angeles County
Community Health Councils
Community Health Partnership
Community Medical Wellness Centers
County Health Executives Association of California
County of Contra Costa
County of San Diego
County of San Francisco
County of Santa Barbara
County of Santa Clara
County Welfare Directors Association of California
Desert Aids Project
District Hospital Leadership Forum
Eisner Health
El Proyecto Del Barrio, Inc.
Family Health Care Centers of Greater Los Angeles, Inc.
Father Joe's Villages
First 5 Association of California
Golden Valley Health Centers
Governmental Advocates, Inc.
Health Access California
Health Alliance of Northern California

Health Care LA
Health Center Partners of Southern California
Health Improvement Partnership of Santa Cruz
Kheir Clinic
Kheir Health Services
LA Clinica De LA Raza, INC.
Lifelong Medical Care
Los Angeles Homeless Services Authority
Los Angeles LGBT Center
Mission City Community Network
Morongo Basin Healthcare District
MPact Global Action for Gay Men's Health and Human Rights
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Multiple Sclerosis Society
Natividad Medical Center - County of Monterey
Neighborhood Healthcare
North Coast Clinics Network
North East Medical Services
Northeast Valley Health Corporation
Occupational Therapy Association of California
OCHIN
Ole Health
ParkTree Community Health Centers
Petaluma Health Center
Queens Care Health Centers
Redwood Community Health Coalition
Rural County Representatives of California
Saban Community Clinic
Salud Para La Gente
San Fernando Community Health Center
San Francisco Department of Public Health
San Mateo County Board of Supervisors
San Ysidro Health
Santa Barbara Women's Political Committee
Santa Barbara; County of
Santa Cruz Community Health Centers
Santa Rosa Community Health
Shasta Community Health Center
Solano County Board of Supervisors
South Bay Family Health Center
South Central Family Health Center
St. John’s Well Child and Family Center
Steinberg Institute
Sutter Health
TCC Family Health
Tenet Healthcare Corporation
The Achievable Foundation
The California Association of Local Behavioral Health Boards and Commissions
The Los Angeles Trust for Children's Health

Triple P America Inc.
TrueCare
UMMA Community Clinic
Unicare Community Health Center
Universal Community Health Center
Urban Counties of California
Venice Family Clinic
WellSpace Health
Western Center on Law & Poverty
Westside Family Health Center
Women's Health Specialists

Oppose: America's Health Insurance Plans
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Chamber of Commerce (unless amended)

-- END --

SECTION 1.

(a) The Legislature finds and declares all of the following:

(1) The Legislature has recognized the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the provider, and enacted protections in Section 14132.72 of the Welfare and Institutions Code to prevent the State Department of Health Care Services from restricting or limiting telehealth services.

(2) The use of telehealth was expanded during the COVID-19 pandemic public health emergency and has proven to be an important modality for patients to stay connected to their health care providers. Telehealth has been especially critical for California's Medi-Cal patients.

(3) Patients have reported high satisfaction with telehealth, noting how easy it is to connect with their care teams without having to take time off work, find childcare, or find transportation to an in-person appointment.

(4) In addition to video access, audio-only care is essential because many patients have reported challenges accessing video technology due to limitations with data plans and internet access.

(5) Primary care and specialty care providers have found telehealth to be a critical access point to address a variety of health care needs, including helping patients manage chronic disease, adjust pain medications, and for followup visits after a procedure, among others.

(6) Behavioral health providers have found that offering telehealth has engaged patients in necessary care they would never have received if required to walk into a clinic.

(7) Health care providers have reported significant decreases in the number of missed appointments since telehealth became available, helping to ensure that patients receive high-quality care in a timely manner.

(8) Telehealth is widely available to individuals with health insurance in the commercial market, and existing law in Section 1374.14 of the Health and Safety Code and Section 10123.855 of the Insurance Code requires commercial health care service plans and health insurers to pay for services delivered through telehealth services on the same basis as equivalent services furnished in person. Medi-Cal must evolve with the rest of the health care industry to achieve health equity for low-income Californians.

(9) The expanded telehealth options that patients and providers have relied on during the COVID-19 pandemic should continue to be available to Medi-Cal recipients after the public health emergency is over.

(b) It is the intent of the Legislature to continue the provision of telehealth in Medi-Cal, including video and audio-only technology, for the purposes of expanding access and enhancing delivery of health care services for beneficiaries.

SEC. 2.

Section 2290.5 of the Business and Professions Code is amended to read:

2290.5.

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) “Health care provider” means any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

~~(D) An associate clinical social worker functioning pursuant to Section 4996.23.2.~~

~~(E) An associate professional clinical counselor functioning pursuant to Section 4999.46.3.~~

(4) “Originating site” means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) “Synchronous interaction” means a real-time ~~interaction~~ *interaction, including, but not limited to, audiovideo, audio only, such as telephone, and other virtual communication,* between a patient and a health care provider located at a distant site.

(6) “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section shall not be construed to alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient’s rights to the patient’s medical information shall apply to telehealth interactions.

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider’s license shall apply to that health care provider while providing telehealth services.

(h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(i) (1) Notwithstanding any other law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

SEC. 3.

Section 1374.14 of the Health and Safety Code is amended to read:

1374.14.

(a) (1) A contract between a health care service plan and a health care provider for the provision of health care services to an enrollee or subscriber shall specify that the health care service plan shall reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an enrollee or subscriber appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.

(2) This section does not limit the ability of a health care service plan and a health care provider to negotiate the rate of reimbursement for a health care service provided pursuant to a contract subject to this section. Services that are the same, as determined by the provider's description of the service on the claim, shall be reimbursed at the same rate whether provided in person or through telehealth. When negotiating a rate of reimbursement for telehealth services for which no in-person equivalent exists, a health care service plan and the provider shall ensure the rate is consistent with subdivision (h) of Section 1367.

(3) This section does not require telehealth reimbursement to be unbundled from other capitated or bundled, risk-based payments.

(4) If a health care service plan delegates responsibility for the performance of the duties described in this section to a contracted entity, including a medical group or independent practice association, then the delegated entity shall comply with this section.

(5) The obligation of a health care service plan to comply with this section shall not be waived if the plan delegates services or activities that the plan is required to perform to its provider or another contracting entity. A plan's implementation of this section shall be consistent with the requirements of the Health Care Providers' Bill of Rights, and a material change in the obligations of a plan's contracting network providers shall be considered a material change to the provider contract, within the meaning of subdivision (b) Section 1375.7.

(b) (1) A health care service plan contract shall specify that the health care service plan shall provide coverage for health care services appropriately delivered through telehealth services on the same basis and to the same extent that the health care service plan is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.

(2) This section does not alter the obligation of a health care service plan to ensure that enrollees have access to all covered services through an adequate network of contracted providers, as required under Sections 1367, 1367.03, and 1367.035, and the regulations promulgated thereunder.

(3) This section does not require a health care service plan to cover telehealth services provided by an out-of-network provider, unless coverage is required under other law.

(c) A health care service plan may offer a contract containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, provided that the copayment or coinsurance does not exceed the copayment or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. This subdivision does not require cost sharing for services provided through telehealth.

(d) Services provided through telehealth and covered pursuant to this chapter shall be subject to the same deductible and annual or lifetime dollar maximum as equivalent services that are not provided through telehealth.

(e) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.

~~(f) This section shall not apply to Medi-Cal managed care plans that contract with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) of, Chapter 8 (commencing with Section 14200) of, or Chapter 8.75 (commencing with Section 14591) of, Part 3 of Division 9 of the Welfare and Institutions Code.~~

~~(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

SEC. 4.

Section 10123.855 of the Insurance Code is amended to read:

10123.855.

(a) (1) A contract between a health insurer and a health care provider for an alternative rate of payment pursuant to Section 10133 shall specify that the health insurer shall reimburse the treating or consulting health care provider for the diagnosis, consultation, or treatment of an insured or policyholder appropriately delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment.

(2) This section does not limit the ability of a health insurer and a health care provider to negotiate the rate of reimbursement for a health care service provided pursuant to a contract subject to this section. Services that are the same, as determined by the provider's description of the service on the claim, shall be reimbursed at the same rate whether provided in person or through telehealth. When negotiating a rate of reimbursement for telehealth services for which no in-person equivalent exists, a health insurer and the provider shall ensure the rate is consistent with subdivision (a) of Section 10123.137.

(3) If a health insurer delegates responsibility for the performance of the duties described in this section to a contracted entity, including a medical group or independent practice association, then the delegated entity shall comply with this section.

(4) The obligation of a health insurer to comply with this section shall not be waived if the insurer delegates services or activities that the insurer is required to perform to its provider or another contracting entity. An insurer's implementation of this section shall be consistent with the requirements of the Health Care Providers' Bill of Rights, and a material change in the obligations of an insurer's contracting network providers shall be considered a material change to the provider contract, within the meaning of subdivision (b) Section 10133.65.

(b) (1) A policy of health insurance that provides benefits through contracts with providers at alternative rates of payment shall specify that the health insurer shall provide coverage for health care services appropriately delivered through telehealth services on the same basis and to the same extent that the health insurer is responsible for coverage for the same service through in-person diagnosis, consultation, or treatment. Coverage shall not be limited only to services delivered by select third-party corporate telehealth providers.

(2) This section does not alter the existing statutory or regulatory obligations of a health insurer to ensure that insureds have access to all covered services through an adequate network of contracted providers, as required by Sections 10133 and 10133.5 and the regulations promulgated thereunder.

(3) This section does not require a health insurer to deliver health care services through telehealth services.

(4) This section does not require a health insurer to cover telehealth services provided by an out-of-network provider, unless coverage is required under other ~~provisions of~~ law.

(c) A health insurer may offer a policy containing a copayment or coinsurance requirement for a health care service delivered through telehealth services, provided that the copayment or coinsurance does not exceed the copayment or coinsurance applicable if the same services were delivered through in-person diagnosis, consultation, or treatment. This subdivision does not require cost sharing for services provided through telehealth.

(d) Services provided through telehealth and covered pursuant to this chapter shall be subject to the same deductible and annual or lifetime dollar maximum as equivalent services that are not provided through telehealth.

(e) The definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code apply to this section.

~~(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.~~

SEC. 5.

Section 14087.95 of the Welfare and Institutions Code is amended to read:

14087.95.

~~Counties~~ *(a) A county* contracting with the department pursuant to this article shall be exempt from ~~the provisions of~~ Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out the contracts.

(b) (1) Notwithstanding subdivision (a), a county contracting with the department pursuant to this article shall comply with Section 1374.14 of the Health and Safety Code.

(2) If a county subcontracts for the provision of services pursuant to this article, as authorized under Section 14087.6, the subcontractor shall comply with Section 1374.14 of the Health and Safety Code.

SEC. 6.

Section 14092.4 is added to the Welfare and Institutions Code, immediately following Section 14092.35, to read:

14092.4.

(a) To enroll individuals in Medi-Cal programs that permit onsite enrollment and recertification of individuals by a provider or county eligibility worker as applicable, the following shall apply:

(1) For the Family Planning, Access, Care, and Treatment (Family PACT), Presumptive Eligibility for Pregnant Women, and Every Woman Counts programs, a provider may enroll or recertify an individual remotely through telehealth and other virtual communication modalities, including telephone, based on the current Medi-Cal program eligibility form or forms applicable to the specific program.

(2) For the Medi-Cal Minor Consent program, a county eligibility worker may determine eligibility for, or recertify eligibility for, an individual remotely through virtual communication modalities, including telephone.

(b) The department may develop program policies and systems to support implementation of remote eligibility determination, enrollment, and recertification, consistent with this section.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

SEC. 7.

Section 14132.721 is added to the Welfare and Institutions Code, immediately following Section 14132.72, to read:

14132.721.

(a) Notwithstanding any other law, and subject to paragraph (2) of subdivision (c), health care services furnished by an enrolled clinic through telehealth shall be reimbursed by Medi-Cal on the same basis, to the same extent, and at the same payment rate as those services are reimbursed if furnished in person, consistent with this section.

(b) Consistent with the protections for health care providers set forth in the Telehealth Advancement Act of 2011, including Section 14132.72, the department shall not restrict the ability of an enrolled clinic to provide and be reimbursed for services furnished through telehealth and this subdivision shall not prohibit policies that require all of the clinical elements of a service to be met as a condition of reimbursement. Prohibited restrictions include all of the following:

(1) Requirements for face-to-face contact between an enrolled clinic provider and a patient.

(2) Requirements for a patient's or provider's physical presence at the enrolled clinic or any other location.

(3) Requirements for prior in-person contacts between the enrolled clinic and a patient.

(4) Requirements for documentation of a barrier to an in-person visit or a special need for a telehealth visit.

(5) Policies, including reimbursement policies, that impose more stringent requirements on telehealth services than equivalent services furnished in person.

(6) Limitations on the means or technologies through which telehealth services are furnished. This paragraph does not prohibit policies that require compliance with applicable federal and state health information privacy and security laws.

(c) (1) Notwithstanding the in-person requirements of Section 14132.100, if an enrolled clinic is also a federally qualified health center or a rural health center, the definition of "visit" set forth in subdivision (g) of Section 14132.100 includes a telehealth encounter to the same extent it includes an in-person encounter.

(2) Health care services furnished through audio-only telehealth, including by telephone, by a federally qualified health center or a rural health clinic, other than mental health services that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver, shall be reimbursed pursuant to Section 14132.722.

(d) This section does not eliminate the obligation of a health care provider to obtain verbal or written consent from the patient before delivery of health care via telehealth or the rights of the patient, pursuant to subdivisions (b) and (c) of Section 2290.5 of the Business and Professions Code.

(e) (1) The department shall require Medi-Cal managed care plans, through contract or otherwise, to adhere to the requirements of subdivision (b) of this section.

(2) Medi-Cal managed care plans shall comply with the requirements for health care service plan contracts set forth in Section 1374.14 of the Health and Safety Code and the requirements for health insurance policies set forth in Section 10123.855 of the Insurance Code. Medi-Cal managed care plans shall not be required to pay federally qualified health centers and rural health clinics the same amount for audio-only telehealth visits as equivalent in-person visits on or after January 1, 2025. This paragraph shall be applied to the extent consistent with federal Medicaid requirements that a managed care plan provide payment for services furnished by a federally qualified health center or rural health clinic that is not less than the level and amount of payment the managed care plan would make for the services if the services were furnished by a provider that is not a federally qualified health center or rural health clinic.

(f) This section does not limit reimbursement for or coverage of, or reduce access to, services provided through telehealth before the enactment of this section.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action.

(h) The department shall seek any necessary federal approvals and obtain federal financial participation in implementing this section. This section shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and not otherwise jeopardized.

(i) For purposes of this section:

(1) "Enrolled clinic" means any of the following:

(A) A clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

(B) An intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code.

(C) A hospital or nonhospital-based clinic operated by the state or any of its political subdivisions, including the University of California, or a city, county, city and county, or hospital authority.

(D) A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in Section 1603 of Title 25 of the United States Code.

(2) "Telehealth" has the same meaning as in subdivision (a) of Section 2290.5 of the Business and Professions Code, which includes audio-only telephone communication technologies.

SEC. 8.

Section 14132.722 is added to the Welfare and Institutions Code, immediately following Section 14132.721, to read:

14132.722.

(a) (1) Except as described in paragraph (2), the department shall indefinitely continue the telehealth flexibilities in place during the COVID-19 pandemic, including those implemented pursuant to Section 14132.723.

(2) (A) The department shall reimburse each federally qualified health center and rural health clinic for health care services furnished through audio-only telehealth, including telephone, at the applicable prospective payment system per-visit rate, consistent with Section 14132.721, until the earlier of January 1, 2025, or the date that the federally qualified health center or rural health clinic elects to participate in an alternative payment methodology described in subdivision (d).

(B) Notwithstanding subparagraph (A), mental health services that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver, furnished through audio-only telehealth, shall continue to be reimbursed at the applicable prospective payment system per-visit rate indefinitely, except if the federally qualified health center or rural health clinic elects an alternative payment methodology that covers those services.

(b) (1) By January 2022, the department shall convene an advisory group that includes representatives from community health centers, designated public hospitals, Medi-Cal managed care plans, consumer groups, labor organizations, behavioral health providers, counties, health care districts formed pursuant to Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code, and other Medi-Cal providers. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.

(2) The advisory group shall provide input to the department on the development of a revised Medi-Cal telehealth policy that promotes all of the following principles:

(A) Telehealth shall be used as a means to promote timely and patient-centered access to health care.

(B) Patients, in conjunction with their providers, shall be offered their choice of service delivery mode. Patients shall retain the right to receive health care in person.

(C) Confidentiality and security of patient information shall be protected.

(D) Usual standard of care requirements shall apply to services provided via telehealth, including quality, safety, and clinical effectiveness.

(E) The department shall consider disparities in the utilization of, and access to, telehealth, and shall support patients and providers in increasing access to the technologies needed to use telehealth.

(F) When the care provided during a telehealth visit is commensurate with what would have been provided in person, payment shall also be commensurate.

(c) (1) By July 2024, the department shall complete an evaluation to assess the benefits of telehealth in Medi-Cal. The evaluation shall analyze improved access for patients, changes in health quality outcomes and utilization, and best practices for the right mix of in-person visits and telehealth. The department shall utilize any potential federal funding or other nonstate general funding that may be available to support the implementation of this subdivision.

(2) The department shall provide data and information to the evaluator, as appropriate, and report its findings and recommendations on the evaluation to the appropriate policy and fiscal committees of the Legislature no later than October 31, 2024.

(d) (1) The department, in consultation with affected stakeholders, including, but not limited to, the California Association of Public Hospitals and Health Systems and the California Primary Care Association, shall develop one or more federally permissible alternative payment models, consistent with Section 1396a(bb)(6) of Title 42 of the United States Code, that federally qualified health centers and rural health clinics may elect to participate in.

(2) (A) The alternative payment models shall be designed to enable the continued provision of high-quality health care, while furthering the goals of the Medi-Cal program to improve access and equity, and incentivize and support clinic infrastructure improvements.

(B) To the extent that an alternative payment model includes a separate per-visit payment rate for audio-only telehealth visits, that payment rate shall be less than the rate the federally qualified health center or rural health clinic receives for an in-person visit. This subparagraph shall not apply with respect to mental health services furnished through audio-only telehealth that are excluded from the benefits provided by county mental health plans under the specialty mental health services waiver.

(3) The department shall submit and seek federal approval of the state plan amendment necessary for the implementation of this subdivision, to be effective no later than January 1, 2025. This section shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and not otherwise jeopardized.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 17, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 6(b)(2) – SB 731 (Durazo) Criminal records: relief

Background:

This bill amends section 11105 of the Penal Code which would prohibit the Board from receiving conviction information for applicants to the Board if their conviction was granted relief pursuant to sections 1203.4, 1203.4(a), 1203.41, 1203.42, or 1203.49 of the Penal Code, so long as a period of two years has elapsed since the date the relief was granted and the applicant was not convicted of a new criminal offense.

This bill would have a large impact on the Board of Psychology's licensing and enforcement programs, and it would hinder the Board's ability to carry out its legislative mandate of consumer protection. Currently, the Board completes an enforcement review for every applicant with a criminal history, determines whether the crimes committed are substantially related to the duties of licensure. This bill would significantly diminish the Board's ability to make these determinations without access to the necessary conviction information.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to **Oppose** SB 731 (Durazo).

On 4/2/2021, the Board approved the Legislative and Regulatory Affairs Committee recommendation to **Oppose** SB 731 (Durazo).

On 5/20/2021, amendments were accepted in the Appropriations Committee. These amendments exclude serious, violent, and sex felonies from automatic relief; delay automatic relief for four years where there is a supervision violation or a new felony conviction; strike the restriction on the access to cleared records; and limit retroactivity to January 1, 2005.

On 6/23/2021, amendments were accepted in the Public Safety Committee. These amendments state that relief granted pursuant to Section 1203.41 do not release a defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court. Protective orders shall remain in effect until expiration or until the court modifies or terminated the order.

On 4/7/22, Assembly Member Reyes placed this bill on the Inactive File, meaning this bill is unlikely to move this legislative session.

Location: Assembly Floor Inactive File

Status: 4/7/22 – Reconsideration granted. Ordered to the Inactive File on request of Assembly Member Reyes.

Action Requested:

Since there are still concerns with the bill, no action on this bill is requested.

Attachment A: Board Letter of Opposition
Attachment B: Senate Floor Analysis
Attachment C: SB 731 (Durazo) Bill Text

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PSYCHOLOGY

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August 18, 2021

The Honorable Lorena Gonzalez
Chair, Assembly Committee on Appropriations
1020 N. Street, Room 111
Sacramento, CA 95814

RE: SB 731 (Durazo) – Criminal Records: Relief

Dear Chair Gonzalez:

The Board of Psychology (Board) regrets to share our OPPOSE position on SB 731 (Durazo). This bill would significantly impair the Board's ability to access critical arrest and conviction information regarding its licensees, petitioners, and applicants, and would significantly undermine the Board's ability to carry out its mission of consumer protection.

Specifically, SB 731 (Durazo) would implement a system to prospectively and retroactively seal criminal and arrest records and would require the Department of Justice, beginning on January 1, 2022, to archive all criminal records. These archived criminal records would not be included in any state or federal summary criminal history provided by the department, except if compliance with applicable federal law requires the inclusion.

The bill would diminish the Board's ability to adequately protect the health and safety of California consumers of psychological services by removing the Board's ability to review and evaluate a current licensee's arrest and conviction information for the purposes of approving an application for licensure. Such arrest records have provided a comprehensive proof of an applicant's ability to practice without harm to the public. For example, an initial arrest record has revealed instances of domestic violence that might not have been shared with the Board previously. While these types of arrest warrants are usually dropped, some arrest reports include information regarding substance abuse or cognitive issues. We have seen arrests for possession of child pornography, indecent exposure, stalking, possession of drugs and violating a restraining order. These types of reports provide a holistic view of an applicant in the context of consumer protection and are vital to our vetting process.

Due to the bill's weakening of the consumer protections integral to the Board's enforcement processes and the bill's undermining of the Board's legislative mandate of consumer protection, the Board asks for a "**No**" vote on SB 731 (Durazo).

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113.

Sincerely,

SEYRON FOO
President, Board of Psychology

cc: Assemblyman Frank Bigelow (Vice Chair)
Assemblymember Durazo
Members of the Assembly Appropriations Committee
Jennifer Swenson, Principal Consultant, Committee on Appropriations

Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 731
Author: Durazo (D) and Bradford (D), et al.
Amended: 9/2/21
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/13/21
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 30-7, 6/2/21
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Dahle, Grove, Jones, Ochoa Bogh, Wilk
NO VOTE RECORDED: Hurtado, Melendez, Nielsen

ASSEMBLY FLOOR: Not available

SUBJECT: Criminal records: relief

SOURCE: Californians for Safety and Justice

DIGEST: This bill permits additional relief by way of withdrawing a plea and deleting arrest records for the purpose of most criminal background checks.

Assembly Amendments:

1) Provide that relief granted by this bill does not release a defendant from unexpired criminal protective orders.

2) Clarify that these provisions do not limit people from seeking relief under any other provisions.

3) Provide that a person denied relief continues to be eligible to relief in other provisions.

4) Clarify that the provision stating that the order does not relieve them from an obligation to disclose the conviction to any direct question contained in an application for public office or licensure by a state or federal agency to also include applications or licensure by a federally recognized tribe.

5) Clarify that Department of Social Services can take action based on records that have been granted relief.

6) Change the effective date to July 1, 2023.

7) Remove California Department of Corrections and Parole from procedures related to both the petition based relief and automated relief.

8) Make updates based on changes to existing law made by the Budget Act.

9) Add double-jointing amendments.

ANALYSIS:

Existing law:

1) Provides that on a monthly basis the Department of Justice (DOJ) shall review the records in the statewide criminal databases and shall identify persons with records of arrest that are eligible for arrest record relief, with no requirement that the person file a motion seeking relief. A person is eligible for relief if the arrest occurred on or after January 1, 2021 and meets any of the following conditions:

    a) The arrest was for a misdemeanor and the charge dismissed.
    b) The arrest was for a misdemeanor and no criminal proceedings have been initiated one year from the date of the arrest.
    c) If the arrest was for a jail felony, punishable by 8 or more years and no proceedings have been initiated 3 years after the date of the arrest, and no conviction occurred, or the arrestee was a acquitted of the charges.
    d) If the person successfully completed a specified diversion program.

2) Subjects the relief granted to the following conditions:

a) It does not relieve a person of an obligation to disclose an arrest in an application for employment as a peace officer.
b) It does not limit the ability of a criminal justice agency to access the arrest information.
c) It does not limit the ability of a district attorney to prosecute for the offense if it is within the statute of limitations.
d) It does not impact a person's authorization to own or possess a firearm
e) It does not impact any prohibition on holding public office.
f) It does not impact licensing for foster homes and similar facilities.
g) It does not limit other motions for relief. (Penal Code Section 851.93)

3) Provides that if a person is sentenced to a jail felony, the court, in its discretion, in the interest of judgement may allow a person to withdraw their guilty plea and enter a plea of not guilty and the court shall set aside the verdict and dismiss the accusations or information against the defendant when specified conditions are met. The relief shall be not be granted unless the prosecuting attorney has been given 15 days' notice of the petition for relief. (Penal Code Section 1203.41)

4) Provides that commencing July 1, 2022, and subject to a Budget appropriation, on a monthly basis, the DOJ shall review records in the statewide criminal justice databases and shall identify person with convictions that meet specified criterial and are eligible for automatic conviction relief. A person is eligible for relief if they meet all of the following conditions:

a) The person is not required to register as a Sex Offender.
b) The person does not have an active record for local, state, or federal supervision in the Supervised Release file.
c) Based on the information available, it does not appear the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.
d) There is no indication that the conviction resulted in a sentence of incarceration in state prison.
e) The conviction occurred on or after January 1, 2021 and the defendant either was sentenced to probation and appears to have completed their term of probation without revocation or, the defendant was convicted of an infraction or misdemeanor, was not granted probation, and at least one calendar year has passed since the date of judgement. (Penal Code Section 1203.425(a)(1))

5) Provides that automatic conviction record relief is subject to the following conditions:

   a) It does not relieve a person of the obligation to disclose a conviction when applying to be a peace officer.
   b) It does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire for public office or for contracting with the California State Lottery Commission
   c) It does not affect a person's authorization to own, possess, etc. a firearm.
   d) It does not affect a prohibition from holding public office that would otherwise apply as a result of the conviction.
   e) It does not affect the authority to receive, or take action based on, criminal history information including the authority to receive certified court records.
   f) It does not make eligible a person otherwise ineligible to provide in-home supportive services.
   g) It may still act as a prior for future arrests and convictions. (Penal Code Section 1203.425(a)(3))

This bill:

1) Makes an arrest for a felony and there is no indication that the criminal proceeding has been initiated at least 3 years after the arrest eligible for relief and amends existing law to provide that if the arrest was for a jail or prison felony with a sentence of 8 or more yeas shall be eligible for relief when no criminal proceedings have happened 6 years after the arrest.

2) Makes Penal Code Section 1203.41 apply to all felonies not just jail felonies and provides that if the defendant was on mandatory supervision, the parole officer shall notify the prosecuting attorney when a petition is filed.

3) Deletes the prohibition on granting relief if the person was incarcerated in the state prison.

4) Provides, in addition, that relief granted does not release the defendant from the terms and conditions of any unexpired criminal protective orders.

5) Adds an additional criteria for relief providing for relief if the conviction occurred on or after January 1, 2005, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based on the disposition date and the sentence specified in DOJ's records, appears to have completed all terms of incarceration, probation, mandatory

supervision, postrelease supervision, and parole and a period of four years has eleapsed since the date on which the defendant completed probation or supervision for that conviction during which the person was not convicted of a new felony. This does not apply to a serious or violent felony as defined in the Penal Code or an offense for which a person must register as a sex offender.

6) Contains an effective date of July 1, 2023.

Comments

According to the author:

> Nationally, an estimated 70 million people (nearly one in three adults, and 8 million people in California alone) have a past arrest or conviction on their record.1 The vast majority of people with convictions have long finished their sentence in prison, jail, parole or probation and exited the 'deepest end' of the justice system.

Despite the data on recidivism, California still maintains these records until the person reaches 100 years of age. Due to the widespread usage of background checks in today's society, the availability of these records activate thousands of barriers for one quarter of the state's population resulting in chronic housing insecurities, long-term unemployment, and widespread lack of civic participation. These collateral consequences disproportionately affect Black and Latino communities and have become one of the leading drivers of multi-generational poverty.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee:

1) One-time costs (Fingerprint Fees Account) of $946,000 to the Department of Justice (DOJ) to update existing technological infrastructure designed to identify an expanded universe of arrest and conviction records for relief. Costs to implement the initial review of arrests and convictions occurring on or after January 1, 2021, was approximately $3 million. This bill increases costs to DOJ for expanded review of arrests and convictions.
2)
3) Costs (General Fund (GF)) of approximately $189,000 annually to the Department of Social Services in federal reimbursements for In-Home Supportive Services (IHSS) providers that receive relief for crimes not

considered exempt by the federal government. Additional costs, possibly in the millions of dollars annually, to DSS in Title IV-E compliances issues and subsequent loss in funding that would shift to the GF. Possible additional costs of approximately $25 million annually because of a decline in the federal discount rate calculation.

4)

5) Cost pressures (Trial Court Trust Fund) in the hundreds of thousands of dollars annually for courts to hear additional felony expungement motions pursuant to Penal Code section 1203.41. One hour of court time costs approximately $1,000. If courts are required to hear 20 additional motions for felony expungement statewide requiring an average of 12 hours of court time each, the cost to the courts would be $240,000. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the GF to perform existing duties. This is particularly true, given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Budget Act of 2021 allocates $118.3 million from the GF to backfill continued reduction in fine and fee revenue for trial court operations and $72 million in ongoing GF revenue for trial courts to continue addressing the backlog of cases caused by the pandemic.

SUPPORT: (Verified 9/3/21)

California for Safety and Justice (source)
A New Way of Life Re-entry Project
All of Us or None Los Angeles
All of Us or None Riverside
Alliance of Californians for Community Empowerment Action
American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
Anti-Recidivism Coalition
Arts for Healing and Justice Network
Asian Americans Advancing Justice - California
Asian Solidarity Collective
Bend the Arc: Jewish Action
Black Los Angeles Young Democrats
Blameless and Forever Free Ministries
Building Opportunities for Self-Sufficiency
California Attorneys for Criminal Justice
California Calls

California Catholic Conference
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California Public Defenders Association
California Religious Action Center of Reform Judaism
California State Council of Laborers
Californians Coalition for Women Prisoners
Californians United for a Responsible Budget
Cat Clark Consulting Services LLC
Center of Hope LA
Chrysalis Center
Code for America
Communities United for Restorative Youth Justice
Community Advocates for Just and Moral Governance
Community Legal Services in East Palo Alto
Community Works
County of Los Angeles Board of Supervisors
Courage California
Cure California
Defy Ventures
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Right
Faith in Action Bay Area
Faith in Action East Bay
Family Reunification Equity & Empowerment
Felony Murder Elimination Project
Forward Impact Dba Represent Justice
Fresno Barrios Unidos
Friends Committee on Legislation of California
Homeboy Industries
Initiate Justice
Inland Empire Fair Chance Coalition
Inland Equity Partnership
Kehilla Community Synagogue
LA Voice
Last Prisoner Project
Law Enforcement Action Partnership
Legal Aid At Work
Legal Services for Prisoners With Children

Livefree California
Los Angeles Regional Reentry Partnership
Michelson Center for Public Policy
National Association of Social Workers, California Chapter
People Objective LLC
Phenomenal Angels of the Community
Pico California
Pillars of the Community
Re:store Justice
Riverside Community College District
Root & Rebound
Rubicon Programs
San Bernardino Free Them All
San Francisco Public Defender
Santa Cruz Barrios Unidos Inc.
Shields for Families
Showing Up for Racial Justice Bay Area
Showing Up for Racial Justice San Diego
Showing Up for Racial Justice North County
Showing Up for Racial Justice San Diego
Showing Up for Racial Justice, Bay Area
Smart Justice California
Social & Environmental Justice Committee of the Universalist Unitarian Church of Riverside
Social Justice Research Partnership
Starting Over, Inc.
Team Justice
The Dream Corps
The Experience Christian Ministries
The Reverence Project
Think Dignity
Time for Change Foundation
Timelist Group
Transitions Clinic Network
Uncommon Law
Underground Grit
Underground Scholars Initiative at UC Riverside
Underground Scholars Initiative Berkeley
Underground Scholars Initiative, University of California Davis
Unite-la, Inc.

We the People - San Diego
Young Women's Freedom Center

OPPOSITION: (Verified 9/3/21)

Alliance for Constitutional Sex Offense Laws
California Association of Licensed Investigators
California Board of Psychology
California District Attorneys Association
California Statewide Law Enforcement Association
Dental Hygiene Board of California
Peace Officers Research Association of California
Physician Assistant Board
Veterinary Medical Board
Individual

ARGUMENTS IN SUPPORT: Californians for Safety and Justice, the sponsor of this bill, states:

> Nationally, an estimated 70 million people—nearly one in three adults, and 8 million people in California alone— have a past arrest or conviction on their record. California maintains an individual's criminal records until that person reaches 100 years of age. As a result of the widespread usage of background checks in today's society, the permanence of these records present thousands of barriers resulting in widespread constraints on civic participation.
> Examples of these barriers are felt by families seeking to live outside of impoverished areas, individuals that want careers in education or healthcare, others who want to coach, homeowners that want to joint heir HOA board, couples that want to adopt, or grandchildren that want to care for their elderly grandparent. Old criminal records go beyond economics and into denial of human decency, family responsibility, and basic citizenship.
>
> Lack of access to employment and housing are primary factors driving recidivism, criminal records are serious barriers to successful reentry and come at a cost of $20 billion annually to California's economy. Nationally, it has been estimated that the U.S. loses roughly $372.3 billion per year in terms of gross domestic product due to employment losses among people living with convictions.

SB 731 proposes a structured, automated approach to sunsetting criminal records. Automated sealing of all arrest records that do not result in conviction, and phased relief for convictions records, expand record sealing to all sentences following completion of terms of incarceration, post-release supervision, and an additional period of time - provided the person has completed their sentence without any new felony convictions and has no new charges pending. For the reasons listed above, Californians for Safety and Justice is proud to co-sponsor SB 731.

ARGUMENTS IN OPPOSITION: Peace Officers Research Association of California opposes this bill stating:

Current law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence. Current law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified. This bill would make this relief available to a defendant who has been convicted of any felony.

PORAC believes that by expanding the relief of penalties for all felonies, we are placing our communities at risk. Oftentimes, felony crimes are violent and leave behind innocent victims whose lives will never be the same. By allowing violent criminals back on the street, with their record dismissed, they will have less deterrent to commit another crime. Thus, leaving more victims in their wake. If the author is willing to amend the bill to exclude violent criminals, we would be inclined to remove our opposition.

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Prepared by: Mary Kennedy / PUB. S. /
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****** END ******

SB-731 Criminal records: relief

SECTION 1.
Section 851.93 of the Penal Code is amended to read:

851.93.
(a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for an offense that is punishable by imprisonment pursuant to paragraph (1) or (2) of subdivision (h) of Section 1170, there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) A diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department’s electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's 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.

(5) Relief granted 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.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section does not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition, on the OpenJustice Web portal, as defined in Section 13010.

(g) This section shall be operative commencing July 1, 2022, subject to an appropriation in the annual Budget Act.

(h) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.

SEC. 2.
Section 851.93 is added to the Penal Code, to read:

851.93.
(a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository, shall identify persons with records of arrest that meet the criteria set forth in paragraph (2) and are eligible for arrest record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) (i) The arrest was for a felony offense not described in clause (ii), there is no indication that criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(ii) If the arrest was for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment pursuant to subdivision (h) of Section 1170 for eight years or more, there is no indication that criminal proceedings have been initiated, at least six years have elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(D) The person successfully completed any of the following, relating to that arrest:

(i) A prefiling diversion program, as defined in subdivision (d) of Section 851.87, administered by a prosecuting attorney in lieu of filing an accusatory pleading.

(ii) A drug diversion program administered by a superior court pursuant to Section 1000.5, or a deferred entry of judgment program pursuant to Section 1000 or 1000.8.

(iii) A pretrial diversion program, pursuant to Section 1000.4.

(iv) A diversion program, pursuant to Section 1001.9.

(v) A diversion program described in Chapter 2.8 (commencing with Section 1001.20), Chapter 2.8A (commencing with Section 1001.35), Chapter 2.81 (commencing with Section 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A (commencing with Section 1001.60), Chapter 2.9B (commencing with Section 1001.70), Chapter 2.9C (commencing with Section 1001.80), Chapter 2.9D (commencing with Section 1001.81), or Chapter 2.92 (commencing with Section 1001.85), of Title 6.

(b) (1) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(2) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's arrest record, a note stating "arrest relief granted," listing the date that the department granted relief, and this section. This note shall be included in all statewide criminal databases with a record of the arrest.

(3) Except as otherwise provided in subdivision (d), an arrest for which arrest relief has been granted is deemed not to have occurred, and a person who has been granted arrest relief is released from any penalties and disabilities resulting from the arrest, and may answer any question relating to that arrest accordingly.

(c) On a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in subdivision (d), the court shall not disclose information concerning an arrest that is granted relief pursuant to this section to any person or entity, in any format, except to the person whose arrest was granted relief or a criminal justice agency, as defined in Section 851.92.

(d) Relief granted pursuant to this section is subject to all of the following conditions:

(1) Arrest relief does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(2) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(3) This section does not limit the ability of a district attorney to prosecute, within the applicable statute of limitations, an offense for which arrest relief has been granted pursuant to this section.

(4) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's 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.

(5) Relief granted 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.

(6) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(e) This section does not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law, including, but not limited to, Sections 851.87, 851.90, 851.91, 1000.4, and 1001.9.

(f) The department shall annually publish on the OpenJustice Web portal, as described under Section 13010, statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition.

(g) This section shall be operative commencing July 1, 2023, subject to an appropriation in the annual Budget Act.

SEC. 3.
Section 1203.41 of the Penal Code is amended to read:

1203.41.
(a) If a defendant is ~~sentenced pursuant to paragraph (5) of subdivision (h) of Section 1170,~~ *convicted of a felony,* 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~~ *their* plea of guilty or plea of nolo contendere and enter a plea of not guilty, or, if ~~he or she~~ *the defendant* has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty, and, in either case, the court shall ~~thereupon~~ dismiss the accusations or information against the defendant and ~~he or she~~ *the defendant* shall thereafter be released from all penalties and disabilities resulting from the offense of which ~~he or she has~~ *they have* 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 one year following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, or after the lapse of two years following the defendant's completion of the sentence, if the sentence was imposed pursuant to subparagraph (A) of paragraph (5) of subdivision (h) of Section ~~1170.~~ *1170 or if the defendant was sentenced to the state prison.*

(3) The relief available under this section may be granted only if the defendant is not *on parole or* under supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, and is not serving a sentence for, on probation for, or charged with the commission of any offense.

(4) The defendant shall be informed, either orally or in writing, of the provisions of this section and of ~~his or her~~ *their* right, if any, to petition for a certificate of rehabilitation and pardon at the time ~~he or she is~~ *they are* sentenced.

(5) 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 *all of* 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~~ *them* 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~~ *agency or by a federally recognized tribe, 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~~ *their* custody or control any firearm or prevent ~~his or her~~ *their* 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) This section applies to any conviction specified in subdivision (a) that occurred before, on, or after January 1, ~~2014.~~ *2021.*

(d) 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.

(e) (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.

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

(g) Relief granted pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(h) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections. Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

SEC. 4.
Section 1203.425 of the Penal Code is amended to read:

1203.425.
(a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) ~~(A)~~ Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

~~(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring~~

~~court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.~~

~~(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.~~

~~(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.~~

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

~~(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction.~~

~~(H)~~ *(G)* Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

~~(I)~~ *(H)* Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

~~(J)~~ *(I)* In a 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 relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. ~~If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.~~

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. ~~If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.~~

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. ~~If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.~~

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(d) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.

SEC. 4.1.

Section 1203.425 of the Penal Code is amended to read:

1203.425.

(a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

~~(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction.~~

~~(H)~~ *(G)* Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

~~(I)~~ *(H)* Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

~~(J)~~ *(I)* In a 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 relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a

petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant’s record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant’s hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant’s good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the

applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(d) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.

SEC. 4.2.
Section 1203.425 of the Penal Code is amended to read:

1203.425.
(a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) ~~(A)~~ -Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

~~(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.~~

~~(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.~~

~~(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.~~

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction.

(H) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(I) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(J) In a 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 relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. ~~If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.~~

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. ~~If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.~~

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. ~~If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.~~

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(d) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.

SEC. 4.3.

Section 1203.425 of the Penal Code is amended to read:

1203.425.

(a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from

the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person’s authorization to own, possess, or have in the person’s custody or control a firearm, or the person’s susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by

the court modifying or terminating the order, despite the dismissal of the underlying conviction.

(H) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(I) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(J) In a 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 relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In

determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

(d) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.

SEC. 5.
Section 1203.425 is added to the Penal Code, to read:

1203.425.
(a) (1) (A) Commencing July 1, 2023, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in

the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) The conviction meets either of the following criteria:

(I) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(ia) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(ib) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(II) The conviction occurred on or after January 1, 2005, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based upon the disposition date and the sentence specified in the department's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This subclause does not apply to a conviction of a serious felony defined in subdivision (c) of Section 1192.7, a violent felony as defined in Section 667.5, or a felony offense requiring registration pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief

granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(H) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(I) In a 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 relief had not been granted.

(J) Relief granted pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1016.5, 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, 1203.49 and 1473.7. This section shall not limit petitions for a certificate of rehabilitation or pardon pursuant to Chapter 3.5 of Title 6 of Part 3.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.4b, or 1203.41. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 5.1.
Section 1203.425 is added to the Penal Code, to read:

1203.425.
(a) (1) (A) Commencing July 1, 2023, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify

persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) The conviction meets either of the following criteria:

(I) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(ia) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(ib) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(II) The conviction occurred on or after January 1, 2005, the defendant was convicted of a felony other than one for which the defendant completed probation without revocation, and based upon the disposition date and the sentence specified in the department's records, appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole, and a period of four years has elapsed since the date on which the defendant completed probation or supervision for that conviction and during which the defendant was not convicted of a new felony offense. This subclause does not apply to a conviction of a serious felony defined in subdivision (c) of Section 1192.7, a violent felony as defined in Section 667.5, or a felony offense requiring registration pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on August 1, 2022, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(H) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(I) In a 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 relief had not been granted.

(J) Relief granted pursuant to this section does not release the defendant from the terms and conditions of any unexpired criminal protective orders that have been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying accusation or information.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1016.5, 1203.4, 1203.4a, 1203.4b, 1203.41, 1203.42, 1203.49 and 1473.7. This section shall not limit petitions for a certificate of rehabilitation or pardon pursuant to Chapter 3.5 of Title 6 of Part 3.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 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, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief

pursuant to this section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.4b, or 1203.41. If the court subsequently grants relief pursuant to one of those sections, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 6.

(a) Section 4.1 of this bill incorporates amendments to Section 1203.425 of the Penal Code proposed by both this bill and Assembly Bill 898. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1203.425 of the Penal Code, and (3) Assembly Bill 1281 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 898, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 1203.425 of the Penal Code proposed by both this bill and Assembly Bill 1281. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1203.425 of the Penal Code, (3) Assembly Bill 898 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1281 in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 1203.425 of the Penal Code proposed by this bill, Assembly Bill 898, and Assembly Bill 1281. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2022, (2) all three bills amend Section 1203.425 of the Penal Code, and (3) this bill is enacted after Assembly Bill 898 and Assembly Bill 1281, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 7.

(a) Section 5.1 of this bill incorporates amendments to Section 1203.425 of the Penal Code proposed by this bill and Assembly Bill 898. That section of this bill shall become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1203.425 of the Penal Code, and (3) Assembly Bill 1281 is not enacted or as enacted does not amend that section, and (4) this bill is

enacted after Assembly Bill 898, in which case Section 5 of this bill shall not become operative and subdivision (b) of this section shall not apply.

(b) Section 5.1 of this bill incorporates amendments to Section 1203.425 of the Penal Code proposed by this bill, Assembly Bill 898, and Assembly Bill 1281. That section of this bill shall become operative if (1) all three bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1203.425 of the Penal Code, and (3) this bill is enacted after Assembly Bill 898 and Assembly Bill 1281, in which case Section 5 of this bill shall not become operative and subdivision (a) of this section shall not apply.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 17, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 6(c)(1) – AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses

Background:

Existing law requires specified boards within the department to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board. Existing law requires these temporary licenses to expire 12 months after issuance. Under existing law, some of the funds within the jurisdiction of a board consist of revenue from fees that are continuously appropriated.

This bill would require the temporary licenses described above to expire 30 months after issuance. The bill would require boards not responsible for the licensure and regulation of healing arts licensees and not subject to the temporary licensing provisions described above to issue licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States, as provided. The bill would require an application for a license to include a signed affidavit attesting to the fact that the applicant meets all requirements for a license.

The bill would authorize the immediate termination of a license issued pursuant to these provisions upon a finding that the license holder failed to meet specified requirements or provided substantively inaccurate information that would affect the person's eligibility for licensure, as provided.

On 3/19/2021, the Legislative and Regulatory Affairs Committee agreed with the staff recommendation to watch AB 225 (Gray).

On 4/2/2021, the Board agreed with the Legislative and Regulatory Affairs Committee's recommendation to watch AB 225 (Gray).

Location: Senate Business Professions and Economic Development

Status: 6/30/2021 In committee: Hearing postponed by committee.

Action Requested:

This is for informational purposes only. No action is required at this time.

Attachment A: AB 225 (Gray) Bill Text

AB 225 (Gray) - Department of Consumer Affairs: boards: veterans: military spouses: licenses.

SECTION 1.

Section 115.6 of the Business and Professions Code is amended to read:

115.6.

(a) A board within the department shall, after appropriate investigation, issue the following eligible temporary licenses to an applicant if the applicant meets the requirements set forth in subdivision (c):

(1) Registered nurse license by the Board of Registered Nursing.

(2) Vocational nurse license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(3) Psychiatric technician license issued by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(4) Speech-language pathologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(5) Audiologist license issued by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(6) Veterinarian license issued by the Veterinary Medical Board.

(7) All licenses issued by the Board for Professional Engineers, Land Surveyors, and Geologists.

(8) All licenses issued by the Medical Board of California.

(9) All licenses issued by the Podiatric Medical Board of California.

(b) The board may conduct an investigation of an applicant for purposes of denying or revoking a temporary license issued pursuant to this section. This investigation may include a criminal background check.

(c) An applicant seeking a temporary license pursuant to this section shall meet the following requirements:

(1) The applicant shall supply evidence satisfactory to the board that the applicant is one of the following:

~~(1)~~ *(A)* ~~The applicant shall supply evidence satisfactory to the board that the applicant is married~~ *Married* to, or in a domestic partnership or other legal union with, an active

duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(B) A veteran of the Armed Forces of the United States within 60 months of separation from active duty under other than dishonorable conditions.

(C) A veteran of the Armed Forces of the United States within 120 months of separation from active duty under other than dishonorable conditions and a resident of California prior to entering into military service.

(D) An active duty member of the Armed Forces of the United States with official orders for separation within 90 days under other than dishonorable conditions.

(2) The applicant shall hold a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license from the board.

(3) The applicant shall submit an application to the board that shall include a signed affidavit attesting to the fact that the applicant meets all of the requirements for the temporary license and that the information submitted in the application is accurate, to the best of the applicant's knowledge. The application shall also include written verification from the applicant's original licensing jurisdiction stating that the applicant's license is in good standing in that jurisdiction.

(4) The applicant shall not have committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license under this code at the time the act was committed. A violation of this paragraph may be grounds for the denial or revocation of a temporary license issued by the board.

(5) The applicant shall not have been disciplined by a licensing entity in another jurisdiction and shall not be the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall, upon request by a board, furnish a full set of fingerprints for purposes of conducting a criminal background check.

(d) A board may adopt regulations necessary to administer this section.

(e) A temporary license issued pursuant to this section may be immediately terminated upon a finding that the temporary licenseholder failed to meet any of the requirements described in subdivision (c) or provided substantively inaccurate information that would affect the person's eligibility for temporary licensure. Upon termination of the temporary license, the board shall issue a notice of termination that shall require the temporary licenseholder to immediately cease the practice of the licensed profession upon receipt.

(f) An applicant seeking a temporary license as a civil engineer, geotechnical engineer, structural engineer, land surveyor, professional geologist, professional geophysicist,

certified engineering geologist, or certified hydrogeologist pursuant to this section shall successfully pass the appropriate California-specific examination or examinations required for licensure in those respective professions by the Board for Professional Engineers, Land Surveyors, and Geologists.

(g) A temporary license issued pursuant to this section shall expire 12 months after issuance, upon issuance of ~~an expedited license pursuant to Section 115.5, or upon denial of the application for expedited licensure by the board,~~ *a standard license, a license by endorsement, or an expedited license pursuant to Section 115.5,* whichever occurs first.

~~(h) This section shall remain in effect only until July 1, 2023, and as of that date is repealed.~~

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 17, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 6(c)(1) – AB 646 (Low) Department of Consumer Affairs: boards: expunged convictions

Background:
This bill would require a board within the department that has posted on its online license search system that a person's license was revoked because the person was convicted of a crime, within 90 days of receiving an expungement order for the underlying offense from the person, if the person reapplies for licensure or is relicensed, to post notification of the expungement order and the date thereof on its online license search system. The bill would require the board, on receiving an expungement order, if the person is not currently licensed and does not reapply for licensure, to remove within the same period the initial posting on its online license search system that the person's license was revoked and information previously posted regarding arrests, charges, and convictions. The bill would require the board to charge a fee of $25 to the person to cover the reasonable regulatory cost of administering the bill's provisions, unless there is no associated cost. The bill would require the fee to be deposited by the board into the appropriate fund and would make the fee available only upon appropriation by the Legislature.

Location: 5/4/22 – Double referred to Senate Business, Professions and Economic Development; and Senate Public Safety

Status: Awaiting hearing date in Senate Business, Professions and Economic Development

Action Requested:
This is for informational purposes only. No action is required at this time.

Attachment A: AB 646 (Low) Bill Text

AB 646 (Low) - Department of Consumer Affairs: boards: expunged convictions.

SECTION 1.

Section 493.5 is added to the Business and Professions Code, to read:

493.5.

(a) A board within the department that has posted on its online license search system that a person's license was revoked because the person was convicted of a crime, upon receiving from the person a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code for the underlying offense, shall, within 90 days of receiving the expungement order, unless it is otherwise prohibited by law, or by other terms or conditions, do either of the following:

(1) If the person reapplies for licensure or has been relicensed, post notification of the expungement order and the date thereof on its online license search system.

(2) If the person is not currently licensed and does not reapply for licensure, remove the initial posting on its online license search system that the person's license was revoked and information previously posted regarding arrests, charges, and convictions.

(b) (1) Except as provided in paragraph (2), a board within the department shall charge a fee of twenty-five dollars ($25) to a person described in subdivision (a) to cover the reasonable regulatory cost associated with administering this section.

(2) A board shall not charge the fee if there is no cost associated with administering this section.

(3) A board may adopt regulations to implement this subdivision. The adoption, amendment, or repeal of a regulation authorized by this subdivision is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(4) The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

(c) For purposes of this section, "board" means an entity listed in Section 101.

(d) If any provision in this section conflicts with Section 2027, Section 2027 shall prevail.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item # 7(a)(1) – AB 2222 (Reyes) Student financial aid: Golden State Social Opportunities Program.

Background:

Establishes, upon an appropriation by the Legislature in the Budget Act of 2022, the Golden State Social Opportunities Program (Program), which would provide grants to students studying to become registered psychological associates or other associate-level licensees within the Board of Behavioral Sciences.

Location: Senate Rules Committee

Status: 5/23/22 Read third time. Passed. Ordered to the Senate.

Action Requested:

Staff recommends the Legislative and Regulatory Affairs Committee take a **Support If Amended** position on AB 2222 (Reyes), and requests that the Committee recommends that position to the full Board.

Attachment A: AB 2222 (Reyes) Analysis
Attachment B: AB 2222 (Reyes) Assembly Appropriations Analysis
Attachment C: AB 2222 (Reyes) Bill Text

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2022 Bill Analysis

Author:	Bill Number:	Related Bills:
Assemblymember Eloise Gomez Reyes	AB 2222	AB 2123 (2022)
Sponsor:	**Version:**	
California Coalition for Youth	Amended 4/5/22	
Subject:		
Student financial aid: Golden State Social Opportunities Program.		

SUMMARY

This bill creates the Golden State Social Opportunities Program, which would require the California Student Aid Commission (CSAC) to provide grants of up to $20,000 per year for qualifying students enrolled in a postgraduate program if they commit to register under the Board as a psychological associate, and work in a California-based nonprofit setting for their required "postdegree" hours of supervised experience as an associate registered with the Board of Psychology (Board) or the Board of Behavioral Sciences (BBS).

This bill would require the Board to track the work settings, specifically nonprofit work settings, of registered psychological associates in order to certify nonperformance of grant recipients.

RECOMMENDATION

SUPPORT IF AMENDED – Board staff recommend the Legislative and Regulatory Affairs Committee adopted a Support if Amended position on AB 2222 (Reyes).

Board staff have concerns about the following issues:

- Board involvement in tracking registered psychological associates relevant to the grant program.
- Fiscal impact on the Board.
- Bill terminology.

Summary of Suggested Amendments

- Remove the requirement for the Board to track work settings and remove the Board's role in repayment exception of registered psychological associates.
- Clarify terminology surrounding post-graduate degrees.

REASON FOR THE BILL

AB 2222 addresses critical shortages within the mental health workforce by establishing a scholarship to reduce financial barriers for students as they complete their fieldwork to become LCSWs, LPCCs, or LMFTs."

The author states, "Under this Program, which is based on the Golden State Teacher Grant, CSAC will administer scholarships of up to $20,000 annually to students who commit to working for at least two years at a California-based nonprofit upon completion of their graduate school course of study."

Further, the author contends that, "By prioritizing former foster and homeless youth for grants, AB 2222 will ensure California's mental health professionals are reflective of the communities they serve. This bill will also improve quality of care for current foster and homeless youth, who will benefit from working with providers who share their lived experiences."

ANALYSIS
This bill states the following:

- Requires a grant recipient to agree to work in a California-based nonprofit eligible setting for two years and shall have four years, upon completion of the recipient's postgraduate program, to meet that obligation.

- Specifies a grant recipient shall agree to repay the state 25% of the total amount of the grant awarded to the recipient annually, up to full repayment of the grant, for each year the recipient fails to do one or more of the following: a) Be enrolled in, or have successfully completed, a postgraduate program from a UC, CSU, or an Independent California College or University (ICCU); b) While enrolled in the postgraduate program, maintain good academic standing; and, c) Upon completion of the postgraduate program, satisfy the requirements to become an associate clinical social worker, an associate professional clinical counselor, an associate marriage and family therapist, or a registered psychological associate.

CSAC is the principal state agency responsible for administering financial aid programs for students attending public and private universities, colleges, and vocational schools in California. It also serves as a resource for policymakers and the public on college affordability and financing issues, and advocates for policy changes to eliminate cost as a barrier to any qualified California student pursuing a higher education.

According to the Steinberg Institute, just one-third of Californians who live with a mental illness receive the care they need due to a shortage of behavioral healthcare workers. The consequences of this shortage are only going to intensify during the coming years as professionals retire.

Although Board staff commends the efforts of the author to incentivize more people to join mental health professions and supports proposals to increase access to care, Board staff have the following concerns about the bill.

Board involvement in certification of nonperformance of the commitments of the program.

This bill requires the Board to certify to CSAC nonperformance of the commitment to work in a California-based nonprofit eligible setting for two years or obtain a license as a registered psychological associate, pursuant to Education Code section 69821(a)(2)(B).

The Board does not have the legal authority to ask an applicant for registration or track existing registrants work setting to ensure it meets the requirements of this bill. In order to meet this requirement the Board would need to promulgate regulations which would take approximately 3 years.

Additionally, as stated in Education Code section 69821(a)(3)(B), CSAC will need to promulgate regulations to specify the grant repayment exception. The bill provides that CSAC may define the grant repayment exception as whether, “the Board of Psychology deems the grant recipient to have fulfilled the grant recipient’s licensing requirements” but does not limit the definition to just this piece. Staff is hopeful that this provision can be met using DCA’s BreEZe portal system, rather than having CSAC direct requests to the Board. However, Board staff requests deleting this language so that the Board does not have to track workplace settings for the purpose of meeting the grant program’s requirements.

Fiscal impact on the Board.

If the Board is required to track grant recipients, their license and registration status, as well as their work settings, then the Board will need funding for BreEZe updates and one (1) Office Technician. The fiscal impact section of this analysis goes into further detail.

Unclear bill terminology.

Within Education Code section 69821(b)(1) of the bill, the term “postdegree” is used referring to hours of supervised experience. The term “postdegree” is not found elsewhere in the Education Code and is not a term used by the Board. The Board recognizes pre-doctoral and post-doctoral hours of Supervised Professional Experience (SPE) to qualify for licensure. An applicant for licensure may obtain up to 1,500 hours of pre-doctoral hours of SPE but may meet the requirement for licensure by obtaining all 3,000 hours of SPE after completing a doctoral program. Staff suggests the author clarifies this definition to specify whether Education Code section 69821(b)(1) refers specifically to “pre-doctoral” or “post-doctoral” hours of supervision, as it applies to registered psychological associates.

LEGISLATIVE HISTORY

AB 2123 (Villapudua): Bringing Health Care into Communities Act of 2023.
Session: 2021-22

Seeks to provide housing grants to certain specified health professionals in health professional shortage areas, to be used for mortgage payments. This bill failed the policy committee deadline and is not moving this year.

OTHER STATES' INFORMATION
Not applicable.

PROGRAM BACKGROUND
The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists and psychological associates.

If this bill moves forward as currently written, Board staff would need to promulgate regulations to allow the Board to collect information from registrants regarding whether their work location is a California based nonprofit. The regulatory process for this bill could take 3 years.

FISCAL IMPACT
As the number of grant recipients that will become registered psychological associates is unknown, the Board cannot absorb the costs of AB 2222 with existing limited resources, due to the Board's current structural imbalance and potential insolvency in fiscal year 2024-2025.

If the Board is required to verify grant recipients, their license and registration status, as well as their work settings per Education Code section 69821(a)(2)(B) and (a)(3)(B), then the Board will need funding for BreEZe updates and one (1.0) additional Office Technician (OT). Depending on the bill's future amendments, if the author decides to reduce, but not eliminate, the requirements for Board staff, the Board may only need 0.5 OT and may still need BreEZe funding in order to include relevant information to the program such as work settings.

If the author agrees to our amendments and removes all requirements for the Board, there would be no fiscal impact.

ECONOMIC IMPACT
The Governor's 2022-23 Budget Proposal calls for a multi-year budget compact with the public segments of higher education. This compact, includes, in part, increasing the number of students who enroll in Social Work by 25% by 2026-27. The goal is to expand and support high-demand career pipelines for climate action, healthcare, social work, and education. This bill appears to align with part of the 2022-23 Budget Proposal.

LEGAL IMPACT
Not applicable.

APPOINTMENTS
Not applicable.

SUPPORT/OPPOSITION

Support:
Aspiranet
Bill Wilson Center
California Alliance of Caregivers
California Alliance of Child and Family Services
California Association of Nonprofits
California Catholic Conference
California Coalition for Youth (Sponsor)
California Opportunity Youth Network
California Psychological Association
Children Now
Family Assistance Program
Los Angeles LGBT Center
National Association of Social Workers, California Chapter
Orangewood Foundation
Sanctuary of Hope
Sycamores
Women's Center Youth and Family Services
YMCA of San Diego County, Youth and Family Services

Opposition:

None.

ARGUMENTS

Proponents: According to the California Coalition for Youth, sponsors of the measure, “AB 2222 addresses critical shortages within the mental health workforce by reducing financial barriers for students as they complete their fieldwork to become LCSWs, LPCCs, LMFTs or psychologists. Under this program, which is based on the Golden State Teacher Grant, the California Student Aid Commission will administer scholarships of up to $20,000 annually to students who commit to working for at least two years at a California-based nonprofit upon completion of their graduate school course of study. Scholarships will be prioritized for former foster and homeless youth to ensure California’s mental health professionals are reflective of the communities they serve.”

Opponents: None.

AMENDMENTS

Suggested amendments. These should be in ~~strikethrough~~ and **underline** and clearly show the affected sections.

SECTION 1.

Article 16 (commencing with Section 69820) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

Article 16. The Golden State Social Opportunities Program

69820.

This article shall be known, and may be cited, as the Golden State Social Opportunities Program.

69821.

(a) As used in this section, the following definitions apply:

(1) "California-based nonprofit" means an institution based in the state to which contributions have been determined by the United States Internal Revenue Service to be tax-deductible pursuant to Section 501(c)(3) of Title 26 of the Internal Revenue Code.

(2) "Program" means the Golden State Social Opportunities Program.

(b) (1) The Golden State Social Opportunities Program is hereby established. The commission shall administer the program. Under the program, the commission shall provide a grant of up to twenty thousand dollars ($20,000) annually to each student who is enrolled in a postgraduate program from a University of California or California State University campus or an independent institution of higher education, as defined in subdivision (b) of Section 66010, if the student commits to working in a California-based nonprofit eligible setting for their required ~~**postdegree**~~ **post-graduate, pre-doctoral or post-doctoral** hours of supervised experience pursuant to Section 2913, 2914, 4980.43, 4996.23, or 4999.46 of the Business and Professions Code.

(2) (A) Money appropriated for the program in the Budget Act of 2022 shall be available for encumbrance or expenditure by the commission until June 30, 2027.

(B) Grants awarded under the program shall not exceed the amount appropriated for the program in the Budget Act of 2022.

(3) Grant funding shall be used to supplement, but not supplant, other sources of grant-based financial aid.

(4) The commission shall give grant priority as follows:

(A) First priority for current or former foster youth and homeless youth.

(B) Second priority for individuals who are currently employed at a California-based nonprofit.

(c) (1) A grant recipient shall agree to work in a California-based nonprofit eligible setting for two years and shall have four years, upon completion of the recipient's postgraduate program **which qualifies for registration**, to meet that obligation. Except as provided in paragraph (3), a grant recipient shall agree to repay the state 25 percent of the total amount of a grant awarded to the recipient annually, up to full repayment of the grant, for each year the recipient fails to do one or more of the following:

(A) Be enrolled in, or have successfully completed, a postgraduate program from a University of California or California State University campus or an independent institution of higher education, as defined in subdivision (b) of Section 66010.

(B) While enrolled in the postgraduate program, maintain good academic standing.
(C) Upon completion of the postgraduate program, satisfy the requirements to become an associate clinical social worker, an associate professional clinical counselor, an associate marriage and family therapist, or a registered psychological associate.
(2) (A) Nonperformance of the commitment to work in a California-based nonprofit eligible setting for two years or obtain registration as an associate clinical social worker, an associate professional clinical counselor, or an associate marriage and family therapist shall be certified by the Board of Behavioral Sciences to the commission.
~~**(B) Nonperformance of the commitment to work in a California-based nonprofit eligible setting for two years or obtain a license as a registered psychological associate shall be certified by the Board of Psychology to the commission.**~~
(3) Any exceptions to the requirement for repayment shall be defined by the commission, and may include, but shall not necessarily be limited to, any of the following:
(A) The Board of Behavioral Sciences deems the grant recipient to have fulfilled the grant recipient's licensing requirements.
~~**(B) The Board of Psychology deems the grant recipient to have fulfilled the grant recipient's licensing requirements.**~~
(C) The grant recipient has a condition covered under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or similar state law.
(D) The grant recipient was called or ordered to active duty status for more than 30 days as a member of a reserve component of the Armed Forces of the United States.
(d) The commission may use up to 5 percent of funding appropriated for purposes of the program for program outreach and administration.
(e) The commission may adopt regulations necessary for the implementation of the program. The commission may adopt emergency regulations it deems necessary for the implementation of the program, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of those regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code.
(f) (1) The commission shall conduct an evaluation of the program to determine the effectiveness of the program to graduate, train, and license associate clinical social workers, associate professional clinical counselors, associate marriage and family therapists, and registered psychological associates.
(2) The commission shall submit a report on the effectiveness of the program to the Department of Finance and the appropriate fiscal and policy committees of the Legislature on or before December 31, 2026, and every two years thereafter.
69822.
This article shall only be implemented upon an appropriation by the Legislature in the Budget Act of 2022 for its purposes.

ASSEMBLY THIRD READING
AB 2222 (Reyes)
As Amended April 5, 2022
Majority vote

SUMMARY

Establishes, upon an appropriation by the Legislature in the Budget Act of 2022, the Golden State Social Opportunities Program (Program).

Major Provisions

1) Requires the California Student Aid Commission (CSAC) to administer the Program.

2) Authorizes CSAC to provide a grant of up to $20,000 annually to each student who is enrolled in a postgraduate program from a University of California (UC) or California State University (CSU) campus or an independent institution of higher education (ICCU), if the student commits to working in a California-based nonprofit eligible setting for their required postdegree hours of supervised experience, as specified.

3) Stipulates that money appropriated for the Program in the Budget Act of 2022 shall be available for encumbrance or expenditure by CSAC until June 30, 2027.

4) Stipulates that grants awarded under the Program shall not exceed the amount appropriated for the program in the Budget Act of 2022.

5) Stipulates that grant funding shall be used to supplement, but not supplant, other sources of grant-based financial aid.

6) Requires CSAC to give grant priority as follows:

   a) First priority for current or former foster youth and homeless youth; and,

   b) Second priority for individuals who are currently employed at a California-based nonprofit.

7) Requires a grant recipient to agree to work in a California-based nonprofit eligible setting for two years and shall have four years, upon completion of the recipient's postgraduate program, to meet that obligation. Specifies a grant recipient shall agree to repay the state 25% of the total amount of the grant awarded to the recipient annually, up to full repayment of the grant, for each year the recipient fails to do one or more of the following:

   a) Be enrolled in, or have successfully completed, a postgraduate program from a UC, CSU, or an ICCU;

   b) While enrolled in the postgraduate program, maintain good academic standing; and,

   c) Upon completion of the postgraduate program, satisfy the requirements to become an associate clinical social worker, an associate professional clinical counselor, an associate marriage and family therapist, or a registered psychological associate.

8) Requires CSAC to submit a report on the effectiveness of the program to the Department of Finance and the appropriate fiscal and policy committees of the Legislature on or before December 31, 2026, and every two years thereafter.

COMMENTS

Background. California is currently facing a severe shortage of mental health workers. According to information provided by the author's office, the projected supply of Licensed Marriage and Family Therapist (LMFT), Licensed Professional Clinical Counselors (LPCC), and Licensed Clinical Social Workers (LCSW), will be inadequate to meet future demand. Further, the current makeup of the mental health workforce does not reflect California's diversity, with Black and Latinx professionals being the most underrepresented groups in the field.

Nonprofits are also struggling to maintain staff in the midst of COVID-19 and the Great Resignation. For nonprofits providing mental health services, it is especially important for their workforce to reflect the diversity of the communities they serve.

Students who are pursuing LCSW, LPCC, and LMFT careers must complete extensive fieldwork education while they are still in school. The required hours depend on the school's accreditation, but can range anywhere from 400-800 hours per year.

Many students seeking to become LCSWs, LPCCs, and LMFTs must scale back or forgo their employment in order to meet the demands of school and their fieldwork hours. This precludes students who cannot afford to stop working from pursuing careers in this field, creating barriers to entering the mental health workforce. This especially affects former foster and homeless youth who seek to serve youth who share their lived experiences, but may lack the financial resources to pursue careers as licensed mental health professionals.

CSAC capacity? California is home to the largest postsecondary system in the nation; serving millions of students a year; many whom rely on the services of CSAC in order to receive various forms of state financial aid. Yet, as of 2021-22, CSAC only has 137.5 authorized ongoing staff positions, as well as 2.2 temporary positons. These positions span seven divisions, the largest of which are program administration and services, information technology (IT), fiscal and administrative services, and the executive division. As of January 2022, CSAC reported that 16% (or 22.5 positions) were vacant, with the IT division accounting for 40% of the vacancies. Committee Staff understands that the majority of CSAC's vacant positions have been unfilled for less than three months and CSAC is actively recruiting to fill the vacant positions.

Recent budget efforts. The Governor's 2022-23 Budget Proposal calls for a multi-year budget compact with the public segments of higher education. This compact, includes, in part, increasing the number of students who enroll in Social Work by 25% by 2026-27. The goal is to expand and support high-demand career pipelines for climate action, healthcare, social work, and education.

This proposal appears to align with part of the 2022-23 Budget Proposal.

According to the Author
According to the author, "AB 2222 addresses critical shortages within the mental health workforce by establishing a scholarship to reduce financial barriers for students as they complete their fieldwork to become LCSWs, LPCCs, or LMFTs."

The author states, "Under this Program, which is based on the Golden State Teacher Grant, CSAC will administer scholarships of up to $20,000 annually to students who commit to working for at least two years at a California-based nonprofit upon completion of their graduate school course of study."

Further, the author contends that, "By prioritizing former foster and homeless youth for grants, AB 2222 will ensure California's mental health professionals are reflective of the communities they serve. This bill will also improve quality of care for current foster and homeless youth, who will benefit from working with providers who share their lived experiences."

Arguments in Support
According to the California Coalition for Youth, sponsors of the measure, "AB 2222 addresses critical shortages within the mental health workforce by reducing financial barriers for students as they complete their fieldwork to become LCSWs, LPCCs, LMFTs or psychologists. Under this program, which is based on the Golden State Teacher Grant, the California Student Aid Commission will administer scholarships of up to $20,000 annually to students who commit to working for at least two years at a California-based nonprofit upon completion of their graduate school course of study. Scholarships will be prioritized for former foster and homeless youth to ensure California's mental health professionals are reflective of the communities they serve."

Arguments in Opposition
None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

1) Unknown one-time General Fund cost pressure, potentially in the low millions of dollars, to provide grants under the Program. Actual cost would depend on the amount the Legislature appropriates for this purpose. A grant of $20,000 for 100 students would cost $2 million. The bill authorizes up to 5% of the appropriated amount to be used by CSAC for outreach and administration.

2) Significant annual costs, potentially in the hundreds of thousands of dollars, for CSAC to administer the program. Even if this is a one-time program, the cost to CSAC to monitor compliance with grant conditions would extend out several years. Depending on the amount appropriated for the grants, the 5% allowance for administrative costs could cover CSAC's costs.

VOTES

ASM HIGHER EDUCATION: 11-0-1
YES: Medina, Choi, Arambula, Bloom, Gabriel, Irwin, Levine, Low, Santiago, Valladares, Akilah Weber
ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 16-0-0
YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

UPDATED

VERSION: April 5, 2022

CONSULTANT: Jeanice Warden / HIGHER ED. / (916) 319-3960 FN: 0002721

AB 2222 (Reyes) Student financial aid: Golden State Social Opportunities Program – Amended 04/05/22

SECTION 1.

Article 16 (commencing with Section 69820) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

Article 16. The Golden State Social Opportunities Program

69820.

This article shall be known, and may be cited, as the Golden State Social Opportunities Program.

69821.

(a) As used in this section, the following definitions apply:

(1) "California-based nonprofit" means an institution based in the state to which contributions have been determined by the United States Internal Revenue Service to be tax-deductible pursuant to Section 501(c)(3) of Title 26 of the Internal Revenue Code.

(2) "Program" means the Golden State Social Opportunities Program.

(b) (1) The Golden State Social Opportunities Program is hereby established. The commission shall administer the program. Under the program, the commission shall provide a grant of up to twenty thousand dollars ($20,000) annually to each student who is enrolled in a postgraduate program from a University of California or California State University campus or an independent institution of higher education, as defined in subdivision (b) of Section 66010, if the student commits to working in a California-based nonprofit eligible setting for their required postdegree hours of supervised experience pursuant to Section 2913, 2914, 4980.43, 4996.23, or 4999.46 of the Business and Professions Code.

(2) (A) Money appropriated for the program in the Budget Act of 2022 shall be available for encumbrance or expenditure by the commission until June 30, 2027.

(B) Grants awarded under the program shall not exceed the amount appropriated for the program in the Budget Act of 2022.

(3) Grant funding shall be used to supplement, but not supplant, other sources of grant-based financial aid.

(4) The commission shall give grant priority as follows:

(A) First priority for current or former foster youth and homeless youth.

(B) Second priority for individuals who are currently employed at a California-based nonprofit.

(c) (1) A grant recipient shall agree to work in a California-based nonprofit eligible setting for two years and shall have four years, upon completion of the recipient's postgraduate program, to meet that obligation. Except as provided in paragraph (3), a grant recipient shall agree to repay the state 25 percent of the total amount of a grant awarded to the recipient annually, up to full repayment of the grant, for each year the recipient fails to do one or more of the following:

(A) Be enrolled in, or have successfully completed, a postgraduate program from a University of California or California State University campus or an independent institution of higher education, as defined in subdivision (b) of Section 66010.

(B) While enrolled in the postgraduate program, maintain good academic standing.

(C) Upon completion of the postgraduate program, satisfy the requirements to become an associate clinical social worker, an associate professional clinical counselor, an associate marriage and family therapist, or a registered psychological associate.

(2) (A) Nonperformance of the commitment to work in a California-based nonprofit eligible setting for two years or obtain registration as an associate clinical social worker, an associate professional clinical counselor, or an associate marriage and family therapist shall be certified by the Board of Behavioral Sciences to the commission.

(B) Nonperformance of the commitment to work in a California-based nonprofit eligible setting for two years or obtain a license as a registered psychological associate shall be certified by the Board of Psychology to the commission.

(3) Any exceptions to the requirement for repayment shall be defined by the commission, and may include, but shall not necessarily be limited to, any of the following:

(A) The Board of Behavioral Sciences deems the grant recipient to have fulfilled the grant recipient's licensing requirements.

(B) The Board of Psychology deems the grant recipient to have fulfilled the grant recipient's licensing requirements.

(C) The grant recipient has a condition covered under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or similar state law.

(D) The grant recipient was called or ordered to active duty status for more than 30 days as a member of a reserve component of the Armed Forces of the United States.

(d) The commission may use up to 5 percent of funding appropriated for purposes of the program for program outreach and administration.

(e) The commission may adopt regulations necessary for the implementation of the program. The commission may adopt emergency regulations it deems necessary for the implementation of the program, in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of the Administrative

Procedure Act, including Section 11349.6 of the Government Code, the adoption of those regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code.

(f) (1) The commission shall conduct an evaluation of the program to determine the effectiveness of the program to graduate, train, and license associate clinical social workers, associate professional clinical counselors, associate marriage and family therapists, and registered psychological associates.

(2) The commission shall submit a report on the effectiveness of the program to the Department of Finance and the appropriate fiscal and policy committees of the Legislature on or before December 31, 2026, and every two years thereafter.

69822.

This article shall only be implemented upon an appropriation by the Legislature in the Budget Act of 2022 for its purposes.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #7(b)(1) – AB 1662 (Gipson) Licensing boards: disqualification from licensure: criminal conviction.

Background:

This bill requires each licensing board under the Department of Consumer Affairs (DCA) to establish a process for a prospective applicant who has been convicted of a crime to request a preapplication determination as to whether that crime could disqualify the prospective applicant from licensure. This bill allows a board to charge a fee for the reasonable cost of administering the predetermination process, not to exceed $50.

On 4/29/2022, the Board took an **Oppose** position on AB 1662 (Gipson).

Location: Senate Rules Committee

Status: 5/24/22 In Senate. Read first time. To Rules Committee for assignment.

Action Requested:

This item is for informational purposes only. No action is requested.

Attachment A: AB 1662 (Gipson) Analysis
Attachment B: AB 1662 (Gipson) Assembly Floor Analysis
Attachment C: AB 1662 (Gipson) Letter of Opposition
Attachment D: AB 1662 (Gipson) Bill Text

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2022 Bill Analysis

Author:	Bill Number:	Related Bills
Assembly Member Mike Gipson	AB 1662	SB 1365 (2022)
Sponsor:	**Version:**	
Council of State Governments Justice Center	Amended 04/27/2022	
Subject:		
Licensing boards: disqualification from licensure: criminal conviction.		

SUMMARY

This bill requires each licensing board under the Department of Consumer Affairs (DCA) to establish a process for a prospective applicant who has been convicted of a crime to request a preapplication determination as to whether that crime could disqualify the prospective applicant from licensure.

This bill allows for the Board to require a prospective applicant to furnish a full set of fingerprints as part of a request for a preapplication determination. It also adds language clarifying that a preapplication determination does not constitute the denial or disqualification of an application for purposes of Business and Professions Code section 489 or any other law. If preapplication determination reveals the potential for a denial of a completed application, the bill requires the Board to provide the following info in writing:

- A summary of criteria used
- Process for the applicant to request a copy of their complete conviction history and process to question the accuracy or completeness of the record.
- Any existing procedure the Board has to challenge the decision or request reconsideration following the denial of a completed application, including criteria related to rehabilitation
- Right to appeal the Board's decision

The bill adds language expressly stating that a preapplication determination shall not be a requirement for licensure or participation in any education or training program. The bill requires the Board to place information regarding the preapplication determination process on their websites. Finally, the bill authorizes the assessment of a fee in an amount up to no more than $50, not to exceed the reasonable cost of implementing the bill.

RECOMMENDATION

OPPOSE – On March 25, 2022, the Legislative and Regulatory Affairs Committee adopted an Oppose position per staff recommendation. On April 29, 2022, the full Board adopted an Oppose position per the Legislative and Regulatory Affairs Committee.

Board Staff still has the following concerns with this bill:

- Liability and risk.
- Increased workload.
- Significant cost pressures.

REASON FOR THE BILL
According to the author, "AB 1662 is focused on getting people back to work, improving access to licensed professions, and eliminating barriers that keep individuals that are going through the re-entry process from obtaining a license. We are talking about an untapped pool of job talent who are ready to work and contribute to society but have historically faced the most barriers at a very basic level. This is about opportunity and hope for those that have been held accountable and paid their dues and deserve a second chance. One of the main barriers that folks face when trying to apply for a licensed profession is the expensive tuition that comes with training and courses one needs to take just to find out that they were denied due to their criminal record. This bill would provide notice on whether their record will disqualify them from receiving an occupational license, prior to financial and educational investment in the requirements for the license."

ANALYSIS
This bill would allow any individual to submit a request for determination at any time, as to whether one or multiple convictions they received, would disqualify them from licensure based on the information submitted with the request. Board Staff has the following concerns:

<u>Liability and risk:</u>

Currently, Board staff has concerns about the liability issues within the bill. If the Board is required to rely on information provided by the applicant, would the Board be held liable if the predetermination is inaccurate? The most recent amendments do not address the Board's concerns on this issue.

<u>Increased workload and cost to the Board:</u>

Currently, applications for licensure or registration with a history of convictions or administrative discipline are reviewed by the Board's Enforcement Unit, with no cost to the applicant. This review is to determine if the conviction or discipline is substantially related to the qualifications, functions, or duties of the profession of psychology, and whether that conviction or discipline should cause the Board to deny the application. Each one of these referrals requires a Staff Services Analyst to spend four and a half hours to review each case, on average.

Additionally, the Board is facing a structural imbalance, and is expected to be insolvent in fiscal year 2024-2025 which begins on July 1, 2024.

Because this bill would allow any individual to submit a request for preapplication determination at any time, including prior to receiving any education towards licensure, Board staff are unable to quantify the number of requests the Board may receive or the cost to the Board to absorb these requests should this bill be signed into law.

Currently, the Board completes reviews applicants' criminal history at the end of the application process. This bill would require the Enforcement Unit to complete the review process for both applicants and potential applicants. Part of the applicants' application fees pay for this review.

Based on the structural imbalance, the Board would have to recoup the costs of this work. The bill was amended on April 27, 2022, to include a maximum $50 fee to charge to pre-applicants. While Board staff appreciates the inclusion of this fee, it will not be enough to recoup the costs.

The Board did provide the Department of Consumer Affairs with an estimation based on a three-year average of applications reviewed by the Enforcement Unit. This calculation is included under the Fiscal Impact.

LEGISLATIVE HISTORY

SB 1365 (Jones): Licensing boards: procedures.
Session: 2021-22
Would require each board or bureau within DCA to post on its website a list of criteria used to evaluate applicants with criminal convictions so potential applicants can understand their probability of gaining licensure. It would require DCA to develop an informal process for verifying applicant information, including performing background checks of applicants and requiring applicants with prior convictions to provide certified court documents so that the proper convictions are recorded in the process. This bill died in the Senate Appropriations Committee.

AB 1076 (Ting): Criminal records: automatic relief.
Session: 2019-20
Chapter 578, Statutes of 2019
Requires the Department of Justice (DOJ), as of January 1, 2021, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and requires the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

AB 2138 (Chiu): Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.
Session: 2017-18
Chapter 995, Statutes of 2018

Reduces barriers to licensure for individuals with prior criminal convictions by limiting a board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions.

OTHER STATES' INFORMATION
Not Applicable

PROGRAM BACKGROUND
The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists and psychological associates.

FISCAL IMPACT
The Department of Consumer Affairs requested the Board provide data on what the bill would cost the Board. In response, the Board used 172.67 cases per year, which is a three-year average of enforcement reviews, at four and a half hours per case review, using a Staff Services Analyst position. The total the Board provided to the Department of Consumer Affairs, is $41,663.54 annually.

Additionally, the Board would need to request 1 Staff Service Analyst positions to meet the workload as required by the bill. This includes the costs of conducting the enforcement reviews, as well as the costs to be incurred by an appeals process.

ECONOMIC IMPACT
Not Applicable

LEGAL IMPACT
Not Applicable

APPOINTMENTS
Not Applicable

SUPPORT/OPPOSITION

Support: Council of State Governments Justice Center (Sponsor)
Institute for Justice
Little Hoover Commission

Opposition: Board for Professional Engineers, Land Surveyors, and Geologists
Dental Hygiene Board of California
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Board of Psychology

ARGUMENTS

Proponents: This bill is sponsored by the Council of State Governments Justice Center (CSG). CSG references the passage of AB 2138 calls "a model state for many other states looking to eliminate various barriers to employment for formerly incarcerated individuals." CSG writes that this bill would build upon that law by "authorizing pre-application eligibility determinations for prospective applicants to know whether their record is disqualifying before investing in the training and education required for a license." CSG argues that "as a fair chance licensing frontrunner, California has demonstrated that thoughtful targeted policies can significantly expand economic mobility without jeopardizing public safety."

The Institute for Justice also supports this bill, writing: "Building on California's 2018 'Fair Chance Licensing' law would help to further eliminate the deterrent effect of licensing barriers on workers who are unsure if their conviction will be disqualifying, reduce recidivism by opening additional stable employment opportunities, provide businesses with qualified workers and save taxpayer incarceration and public benefits costs. Currently, 20 states have enacted such policy in recent years: Arizona, Arkansas, Idaho, Iowa, Indiana, Kansas, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Nevada, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, West Virginia and Wisconsin."

Opponents: The Board for Professional Engineers, Land Surveyors, and Geologists opposes this bill unless amended, arguing that the bill "does not provide sufficient clarity that any preapplication determination by the Board about the effect a conviction may have on a person's ability to obtain a license must necessarily be an initial, non-binding determination." The Board writes that "while the Board understands the intent in helping people with convictions determine whether to continue on their chosen career path, the Board believes it is important to make it clear that any preapplication determination is non-binding and could change to the applicant's detriment or benefit over time."

The Dental Hygiene Board of California also opposes this bill, writing: "The Board understands the time and expense a prospective applicant may incur during training in a prospective licensing field. However, the bill would lead to an increased workload and cost for the Board to pre-review possible applicants without compensation for Board resources. The time and resources used for the pre-application review would be about the same as someone who applied without a conviction. In addition, if the Board must pre-review or approve an applicant without compensation and an additional conviction were to occur prior to licensing, it is possible

the pre-approval would be rescinded, and licensure denied depending on vetting the new conviction."

ASSEMBLY THIRD READING
AB 1662 (Gipson)
As Amended April 27, 2022
Majority vote

SUMMARY

Requires each board under the Department of Consumer Affairs (DCA) to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the board.

Major Provisions

1) Requires a board under the DCA to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the board.

2) Provides that the preapplication determination process shall allow for prospective applicants to request a preapplication determination at any time prior to the submission of a completed application through any method through which the board allows for the submission of completed applications.

3) Authorizes boards that require submission of fingerprints as part of a criminal history background check as part of a completed application to require the submission of fingerprints as part of a preapplication determination.

4) Authorizes boards that require self-disclosure of criminal history as part of a completed application to require self-disclosure as part of a preapplication determination.

5) Clarifies that a reapplication determination shall not constitute the denial or disqualification of an application.

6) Requires boards that make a determination that a potential applicant's criminal history may be cause for denial of a completed application to provide the potential applicant with all of the following:

    a) A summary of the criteria used by the board to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.

    b) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record.

    c) That the applicant would have the right to appeal the board's decision.

    d) Any existing procedure the board has for the prospective applicant would have to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation

7) Requires a board to publish information regarding its process for requesting a preapplication determination on its internet website.

8) Prohibits preapplication determinations from being required for licensure or for participation in any education or training program.

9) Allows boards to charge a fee to a prospective applicant in an amount not to exceed the lesser of fifty dollars or the reasonable cost of administering the bill.

10) Exempts the Bureau for Private Postsecondary Education and the State Athletic Commission from the bill, but applies this bill's requirements to the Department of Real Estate.

COMMENTS

Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for or in receipt of special occupational privileges from the state. However, there are some umbrella statutes that preemptively govern the discretion of these regulatory bodies generally. Specifically, Business and Professions Code (BPC) Section 480 governs the authority of regulatory boards to deny license applications based on an applicant's prior criminal conviction or formal discipline.

Historically boards and bureaus under the DCA were criticized for how they used their previously broad discretion to deny licensure to applicants with criminal histories. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discussed the draconian nature of barriers to occupational entry based on criminal history. NELP's report referred to "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country.

During its 2017 sunset review, the Assembly Committee on Business and Professions discussed barriers to licensure generally in its background paper for the DCA. Specifically, the committee considered how criminal convictions eligible for license disqualification in California were limited in the sense that they must be "substantially related" to the profession into which the license allows entry. Concern was expressed that there was a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards." The Committee's was for the DCA to take steps to improve transparency and consistency in the use of applicants' criminal histories by boards and bureaus.

AB 2138 (Chiu), Chapter 995, Statutes of 2018, the Fair Chance Licensing Act, was subsequently introduced and signed into law, going into effect on July 1, 2020. The bill made substantial reforms to the application process under BPC Section 480 for individuals with criminal records seeking licensure from a board under the DCA. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. The bill further prohibited boards that already require fingerprint background checks from requiring self-disclosure of prior misconduct from the applicant.

One of the key reforms made by AB 2138 was language providing for a seven-year "washout" for prior misconduct. Under the bill, a criminal conviction or formal disciplinary action may only be cause for denial if it occurred within seven years prior to the application. This provision does have several exceptions—for example, all serious and violent felonies can be cause for an application denial with no limitations. Certain boards are authorized to deny an application for

specified financial crimes regardless of age. Finally, criminal convictions for which the applicant was required to register as a sex offender were exempted from the washout; however, this exemption does not include Tier 3 sex offenses, which are the collection of offenders who may be required to register but who present the lowest risk to the public.

AB 2138 also requires the collection of data related to applications and denials for applicants with prior criminal histories. Each board is required to report the number of applications requiring inquiries regarding criminal history as well as the number of applicants who were denied and appealed or provided evidence of mitigation or rehabilitation, and the final disposition and voluntarily provided demographic information, including race and gender.

The intention of this bill is to allow applicants with criminal histories to find out in advance whether their record would be cause for denial of a license under BPC § 480 and the requirements of AB 2138. The author believes that this would be valuable for those who do not wish to invest considerable time and money in meeting other prerequisites for licensure (such as education, training, and examination requirements) if there remains a chance they'd nevertheless be denied following a background check. By requiring boards to make a preapplication determination as to an applicant's criminal history, the author believes more individuals with prior convictions will seek economic opportunity through licensure, which is meaningful both as a means of reducing recidivism and as a public policy viewed through an equity lens.

According to the Author
"AB 1662 is focused on getting people back to work, improving access to licensed professions, and eliminating barriers that keep individuals who are going through the re-entry process from obtaining an occupational license. We are talking about an untapped pool of job talent who are ready to work and contribute to society but have historically faced the most barriers at a very basic level. This is about opportunity and hope for those that have been held accountable and paid their dues and deserve a second chance. One of the main barriers that folks face when trying to apply for a licensed profession is the expensive tuition that comes with training and courses one needs to take just to find out that they were denied due to their criminal record. This bill would provide notice on whether their record might disqualify them from receiving an occupational license in the future, prior to financial and educational investment toward any program."

Arguments in Support
This bill is sponsored by the *Council of State Governments Justice Center* (CSG). CSG references the passage of AB 2138 calls "a model state for many other states looking to eliminate various barriers to employment for formerly incarcerated individuals." CSG writes that this bill would build upon that law by "authorizing pre-application eligibility determinations for prospective applicants to know whether their record is disqualifying before investing in the training and education required for a license." CSG argues that "as a fair chance licensing front-runner, California has demonstrated that thoughtful targeted policies can significantly expand economic mobility without jeopardizing public safety."

The *Institute for Justice* also supports this bill, writing: "Building on California's 2018 'Fair Chance Licensing' law would help to further eliminate the deterrent effect of licensing barriers on workers who are unsure if their conviction will be disqualifying, reduce recidivism by opening additional stable employment opportunities, provide businesses with qualified workers and save taxpayer incarceration and public benefits costs. Currently, 20 states have enacted such

policy in recent years: Arizona, Arkansas, Idaho, Iowa, Indiana, Kansas, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Nevada, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, West Virginia and Wisconsin."

Arguments in Opposition
The *Dental Hygiene Board of California* opposes this bill, writing: "The Board understands the time and expense a prospective applicant may incur during training in a prospective licensing field. However, the bill would lead to an increased workload and cost for the Board to pre-review possible applicants without compensation for Board resources. The time and resources used for the pre-application review would be about the same as someone who applied without a conviction. In addition, if the Board must pre-review or approve an applicant without compensation and an additional conviction were to occur prior to licensing, it is possible the pre-approval would be rescinded, and licensure denied depending on vetting the new conviction."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, estimated ongoing department-wide costs of $2.96 million annually, to the DCA for additional staff resources required by various boards and bureaus to manage increased workload; estimated one-time IT costs of $982,000 for vendor services to create a new "pre-application review" transaction for all DCA license types across multiple IT platforms and to perform website updates pertaining to the new process for all programs.

VOTES

ASM BUSINESS AND PROFESSIONS: 15-1-2
YES: Berman, Bloom, Mia Bonta, Chen, Fong, Gipson, Grayson, Irwin, Lee, McCarty, Medina, Mullin, Salas, Ting, Akilah Weber
NO: Megan Dahle
ABS, ABST OR NV: Flora, Cunningham

ASM APPROPRIATIONS: 14-2-0
YES: Holden, Bryan, Calderon, Carrillo, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson
NO: Bigelow, Megan Dahle

UPDATED

VERSION: April 27, 2022

CONSULTANT: Robert Sumner / B. & P. / (916) 319-3301 FN: 0002498

California Board of PSYCHOLOGY

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May 9, 2021

The Honorable Chris Holden
Chair, Assembly Committee on Appropriations
1021 O Street, Suite 5650
Sacramento, CA 95814

RE: AB 1662 (Gipson) Licensing boards: disqualification from licensure: criminal conviction – OPPOSE

Dear Chair Holden:

On April 29, 2022, the Board of Psychology (Board) voted to adopt an **OPPOSE** position on AB 1662 (Gipson), as amended April 27th, as this bill has raised numerous concerns.

This bill would authorize a prospective applicant that has been convicted of a crime to submit to any board or bureau a request for a preapplication determination that includes information provided by the prospective applicant regarding their criminal conviction. Upon receiving a preapplication determination request, this bill would require the Board to determine if the prospective applicant would be disqualified from licensure by the Board based on the information submitted with the request and deliver that determination to the prospective applicant.

Currently, the Board reviews applicants' criminal history at the end of the application process. This bill would require the Enforcement Unit to complete the review process for both applicants and potential applicants. Part of the applicants' application fees pay for this review. While the Board appreciates the inclusion of a $50 fee that can be assessed to make this determination within the most recent amendments, the Board does not feel that would sufficiently cover the costs associated with this work.

The Department of Consumer Affairs (DCA) asked the Board for a fiscal impact and requested data for determining these costs. The Board determined that an enforcement analyst (Staff Services Analyst position) reviews 172.67 cases per year, which is a three-year average of enforcement reviews, at four and a half hours per case review. The Board determined this bill would cost the $41,663.54 annually. The Board would need to request one (1) Staff Service Analyst position through a Budget Change Proposal to meet the workload as required by the bill. These costs would not be minor or absorbable because the Board does not receive money from the General Fund and the Board is experiencing a structural imbalance with insolvency expected on July 1, 2024.

Additionally, the Board is concerned about the "appeals process." The bill requires the Board to inform the pre-applicant of the process by which to appeal the Board's decision and to provide pre-applicants with information on an "existing procedure" that the Board would use for this purpose. Since the Board does not conduct preapplication determinations, the Board would have to create this process, which would likely be costly and time-consuming. Currently, the Board uses the administrative law hearings for the petition process. The Board sets aside funds annually to cover fees associated with administrative law hearings, and understands the costs involved in this process. The Board is uncertain what components would be required as part of a new appeals process for preapplication determinations, and costs for this component are unknown.

Finally, the most recent amendments do not address additional policy concerns, such as liability, risk, and what constitutes a timely response. The Board would need additional legal protections so that a pre-applicant cannot sue the Board based on a determination.

For these reasons, the Board respectfully requests that you vote **"nay"** on AB 1662 when it comes before you in committee.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113 or Antonette.Sorrick@dca.ca.gov. Thank you.

Sincerely,

Lea Tate, Psy.D.
President, Board of Psychology

cc: Assemblymember Mike Gipson
Assemblymember Frank Bigelow (Vice Chair)
Members of the Assembly Committee on Appropriations
Jennifer Swenson, Principal Consultant, Assembly Committee on Appropriations
Joe Shinstock, Consultant, Assembly Republican Caucus

AB-1662 Licensing boards: disqualification from licensure: criminal conviction – Amended 04/27/2022

SECTION 1.
Section 480.7 is added to the Business and Professions Code, to read:

480.7.
(a) A board shall establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the board pursuant to Section 480.

(b) The process required by subdivision (a) shall allow for prospective applicants to request a preapplication determination at any time prior to the submission of a completed application through any method through which the board allows for the submission of completed applications.

(c) (1) If a prospective applicant requests a preapplication determination, a board designated in subdivision (b) of Section 144 may require a prospective applicant to furnish a full set of fingerprints for purposes of conducting a criminal history record check as part of a preapplication determination.

(2) Prospective applicants seeking a preapplication determination shall be considered applicants for purposes of Section 144.

(3) A board that receives criminal history information as part of a preapplication determination is not required to request subsequent arrest notification service from the Department of Justice pursuant to Section 11105.2 of the Penal Code.

(d) If a prospective applicant requests a preapplication determination, a board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require prospective applicants for licensure under those chapters to disclose criminal conviction history as part of a preapplication determination.

(e) A preapplication determination shall not constitute the denial or disqualification of an application for purposes of Section 489 or any other law.

(f) Upon making a preapplication determination finding that a prospective applicant's criminal history could be cause for denial of a completed application, a board shall provide the prospective applicant with all of the following in writing:

(1) A summary of the criteria used by the board to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with Section 481.

(2) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127, inclusive, of the Penal Code.

(3) That the applicant would have the right to appeal the board's decision.

(4) Any existing procedure the board has for the prospective applicant would have to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation formulated under Section 482.

(g) A board shall publish information regarding its process for requesting a preapplication determination on its internet website.

(h) A preapplication determination shall not be a requirement for licensure or for participation in any education or training program.

(i) Pursuant to this section, a board may charge a fee to a prospective applicant in an amount not to exceed the lesser of fifty dollars ($50) or the reasonable cost of administering this section. The fee shall be deposited by the board into the appropriate fund and shall be available only upon appropriation by the Legislature.

(j) For purposes of this section, "board" includes each licensing entity listed in Section 101, excluding the Bureau for Private Postsecondary Education and the State Athletic Commission, and the Department of Real Estate.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 18, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #14(b)(1)(B) – AB 1733 (Quirk) State bodies: open meetings.

Background:
The bill would require all open meetings to be held by teleconference, would allow for use of teleconference in closed sessions, and would remove existing provisions of the act that require each teleconference location to be identified in the notice and agenda and accessible to the public.

The bill would instead require the state body to provide a means by which the public may remotely hear, or hear and observe, the meeting and may remotely address the state body via two-way audio-visual platform or two-way telephonic service and would require information to be provided in any notice to the public indicating how the public can access the meeting remotely.

The bill would require the state body to provide members of the public a physical location to hear, observe, and address the state body, and would authorize the members of the state body to participate in a meeting remotely or at a designated physical meeting location, and specify that physical presence at any physical meeting location is not necessary for the member to be deemed present at the meeting.

Additionally, this bill would take effect immediately.

On 3/25/2022 the Legislative and Regulatory Committee voted to recommend the Board take a **Support if Amended** position on AB 1733 (Quirk). The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation on AB 2123 on 4/29/2022.

Location: Assembly Committees on Governmental Organization

Status: 4/20/2022 Hearing Postponed by Committee

Action Requested:

This is for informational purposes only. No action is requested.

Attachment A: AB 1733 (Quirk) Support if Amended Letter
Attachment B: AB 1733 (Quirk) Bill Text

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PSYCHOLOGY

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May 26, 2021

The Honorable Bill Quirk
Assemblymember, Assembly District 20
1021 O Street, Suite 5120
Sacramento, CA 95814

RE: AB 1733 (Quirk) State bodies: open meetings – SUPPORT IF AMENDED

Dear Assemblymember Quirk,

On April 29, 2022, the Board of Psychology (Board) voted to adopt a **SUPPORT IF AMENDED** position on your bill, AB 1733.

This bill would change the requirements for open meetings for state bodies, specifically by allowing for use of teleconference in closed sessions; requiring the state body to provide a means by which the public may remotely hear, or hear and observe, the meeting and may remotely address the state body via two-way audio-visual platform or two-way telephonic service; requiring information to be provided in any notice to the public indicating how the public can access the meeting remotely; removing existing provisions of the act that require each teleconference location to be identified in the notice and agenda and accessible to the public.

It would also require a state body to provide members of the public a physical location to hear, observe, and address the state body, authorize the members of a state body to participate in a meeting remotely or at a designated physical meeting location, and specify that physical presence at any physical meeting location is not necessary for the member to be deemed present at the meeting. The bill would take effect immediately due to an urgency clause.

Since April 2020, the Board has conducted public meetings through WebEx, a teleconferencing and videoconferencing service that allows public participants to listen to the meeting, provide public comment, and view documents through the platform. Other Department of Consumer Affairs boards and bureaus have used WebEx for public meetings as well. Using this platform has allowed Board Members, staff, and the public to participate in the meetings from home and maintain social distancing requirements.

Given the Board's looming fiscal insolvency, using a teleconferencing platform has had significant cost savings. Prior to the use of remote meetings, the Board would pay for expenses for Board Members to attend physical, in-person meetings. These expenses included flight, lodging, and transportation. Additionally, at times the Board would have to pay for the cost of reserving the physical meeting space. The Board's Members live all over the State and the full Board meets four times a year. Therefore, the Board would like to have the option of conducting meetings remotely without the requirement of an in-person meeting for the foreseeable future.

The Board appreciates the intent of the bill and certain components, such as removing existing provisions of the Act that require each teleconference location to be identified in the notice and agenda and accessible to the public, as well as the bill taking effect immediately to alleviate logistical issues for various DCA boards and bureaus. Our only concern with this bill is the requirement of the hybrid model not allowing for flexibility of technology in other state buildings or office spaces. If technical difficulties occur, the Board would be required to cancel the meeting without due notice causing cost burdens on our consumers and stakeholders.

The Board has attached suggested amendments to Section 3 of AB 1733 to this letter.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113 or Antonette.Sorrick@dca.ca.gov. Thank you.

Sincerely,

Lea Tate, Psy.D.
President, Board of Psychology

cc: Darci Sears, Policy Consultant, Speaker Rendon's Office
George Wiley, Policy Consultant, Speaker Rendon's Office

Section 3
SEC. 3.
Section 11123 of the Government Code is amended to read:

11123.
(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.
(b) (1) This article ~~requires~~ **allows** a state body to hold an open- meeting by teleconference for the benefit of the public and state body, and allows for use of teleconference in closed sessions. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including all of the following:
(A) The teleconferenced meeting shall comply with all requirements of this article applicable to other meetings.
(B) The portion of the teleconferenced meeting that is required to be open to the public at any physical location specified in the notice of the meeting shall be visible and audible to the public at the location specified in the notice of the meeting.
(C) The state body shall conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. The state body shall provide a means by which the public may remotely hear audio of the meeting or remotely hear and observe the meeting, and a means by which the public may remotely address the state body, as appropriate, via either a two-way audio-visual platform or a two-way telephonic service. Should the state body elect to use a two-way telephonic service only, it must also provide live webcasting of the open meeting. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be specified in any notice required by this article. The agenda shall provide an opportunity for members of the public to remotely address the state body directly pursuant to Section 11125.7.
(D) The state body shall provide members of the public with a physical location at which the public may hear, observe, and address the state body. Each physical location shall be identified in the notice of the meeting.
(E) Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.
(F) The members of the state body may remotely participate in a meeting. The members of the state body may also be physically present and participate at a designated physical meeting location, but no member of the state body shall be required to be physically present at any physical meeting location designated in the notice of the meeting in order to be deemed present at the meeting. All votes taken during a teleconferenced meeting shall be by rollcall.
(G) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings. The state body shall post the agenda on its internet website and,

on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The notice and agenda shall not disclose information regarding any remote location from which a member is participating.
(H) Upon discovering that a means of remote participation required by this section has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.
(2) For the purposes of this subdivision, all of the following definitions shall apply:
(A) "Teleconference" means a meeting of a state body that provides for a connection by electronic means, including by telephone, an internet website, or other online platform, through audio and video. This section does not prohibit a state body from providing members of the public with additional physical locations in which the public may observe and address the state body by electronic means, through either audio or both audio and video.
(B) "Remote location" means a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.
(C) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute participation remotely.
(D) "Two-way audio-visual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.
(E) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audio-visual platform, and allows participants to dial a telephone number to listen and verbally participate.
(F) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers. This section does not prohibit a state body from providing members of the public with additional physical locations in which the public may observe and address the state body by electronic means.
(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
(d) A state body that is organized within the Department of Consumer Affairs and meets at least two times each calendar year shall be deemed to have met the requirements of subdivision (a) of Section 101.7 of the Business and Professions Code.
(e) This section shall not be construed to deny state bodies the ability to encourage full participation by appointees with developmental or other disabilities.

(f) If a member of a state body attends a meeting by teleconference from a remote location, the member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

AB-1733 State bodies: open meetings

SECTION 1.
Section 101.7 of the Business and Professions Code is amended to read:

101.7.
(a) Notwithstanding any other provision of law, boards shall meet at least two times each calendar year. Boards shall meet at least once each calendar year in northern California and once each calendar year in southern California in order to facilitate participation by the public and its ~~licensees.~~ *licensees, unless the board's meetings are held entirely by teleconference.*

(b) The director has discretion to exempt any board from the requirement in subdivision (a) upon a showing of good cause that the board is not able to meet at least two times in a calendar year.

(c) The director may call for a special meeting of the board when a board is not fulfilling its duties.

(d) An agency within the department that is required to provide a written notice pursuant to subdivision (a) of Section 11125 of the Government Code, may provide that notice by regular mail, email, or by both regular mail and email. An agency shall give a person who requests a notice the option of receiving the notice by regular mail, email, or by both regular mail and email. The agency shall comply with the requester's chosen form or forms of notice.

(e) An agency that plans to webcast a meeting shall include in the meeting notice required pursuant to subdivision (a) of Section 11125 of the Government Code a statement of the board's intent to webcast the meeting. An agency may webcast a meeting even if the agency fails to include that statement of intent in the notice.

SEC. 2.
Section 11122.5 of the Government Code is amended to read:

11122.5.
(a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and ~~place~~ *place, including one held entirely by teleconference,* to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) (1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members

of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2) (A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

SEC. 3.
Section 11123 of the Government Code is amended to read:

11123.
(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article ~~does not prohibit~~ *requires* a state body ~~from holding~~ *to hold* an open ~~or closed~~ meeting by teleconference for the benefit of the public and state ~~body.~~ *body, and allows for use of teleconference in closed sessions.* The meeting or proceeding

held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including *all of* the following:

(A) The ~~teleconferencing~~ *teleconferenced* meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public ~~shall be~~ *at any physical location specified in the notice of the meeting shall be visible and* audible to the public at the location specified in the notice of the meeting.

(C) ~~If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and~~ *The state body shall* conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. ~~Each teleconference location shall be identified in the notice and agenda~~ *The state body shall provide a means by which the public may remotely hear audio* of the meeting or ~~proceeding, and each teleconference location shall be accessible to the public.~~ *remotely hear and observe the meeting, and a means by which the public may remotely address the state body, as appropriate, via either a two-way audio-visual platform or a two-way telephonic service. Should the state body elect to use a two-way telephonic service only, it must also provide live webcasting of the open meeting. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be specified in any notice required by this article.* The agenda shall provide an opportunity for members of the public to *remotely* address the state body directly pursuant to Section ~~11125.7 at each teleconference location.~~ *11125.7.*

(D) The state body shall provide members of the public with a physical location at which the public may hear, observe, and address the state body. Each physical location shall be identified in the notice of the meeting.

(E) Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments prior to the meeting or in writing.

~~(D)~~ *(F) The members of the state body may remotely participate in a meeting. The members of the state body may also be physically present and participate at a designated physical meeting location, but no member of the state body shall be required to be physically present at any physical meeting location designated in the notice of the meeting in order to be deemed present at the meeting.* All votes taken during a teleconferenced meeting shall be by rollcall.

~~(E)~~ *(G)* ~~The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.~~ *This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings. The state body shall post the agenda on its internet website and,*

on the day of the meeting, at any physical meeting location designated in the notice of the meeting. The notice and agenda shall not disclose information regarding any remote location from which a member is participating.

~~(F)~~ *(H)* ~~At least one member of~~ *Upon discovering that a means of remote participation required by this section has failed during a meeting and cannot be restored,* the state body shall ~~be physically present at the location specified in the~~ *end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide* notice of the *meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the* meeting.

(2) For the purposes of this subdivision, all of the following definitions shall apply:

~~(2)~~ *(A)* ~~For the purposes of this subdivision, "teleconference"~~ *"Teleconference"* means a meeting of a state ~~body, the members of which are at different locations, connected~~ *body that provides for a connection* by electronic means, ~~through either audio or both~~ *including by telephone, an internet website, or other online platform, through* audio and video. This section does not prohibit a state body from providing members of the public with additional *physical* locations in which the public may observe ~~or~~ *and* address the state body by electronic means, through either audio or both audio and video.

(B) "Remote location" means a location from which a member of a state body participates in a meeting other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(C) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute participation remotely.

(D) "Two-way audio-visual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(E) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audio-visual platform, and allows participants to dial a telephone number to listen and verbally participate.

(F) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers. This section does not prohibit a state body from providing

members of the public with additional physical locations in which the public may observe and address the state body by electronic means.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(d) A state body that is organized within the Department of Consumer Affairs and meets at least two times each calendar year shall be deemed to have met the requirements of subdivision (a) of Section 101.7 of the Business and Professions Code.

(e) This section shall not be construed to deny state bodies the ability to encourage full participation by appointees with developmental or other disabilities.

(f) If a member of a state body attends a meeting by teleconference from a remote location, the member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

SEC. 4.
Section 11123.5 of the Government Code is repealed.

~~**11123.5.**~~
~~(a) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.~~

~~(b) A member of a state body as described in subdivision (a) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.~~

~~(c) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its Internet Web site and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (e).~~

~~(d) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (e), but is not required to disclose information regarding any remote location.~~

~~(e) A state body described in subdivision (a) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. A quorum of the members of the state~~

~~body shall be in attendance at the primary physical meeting location, and members of the state body participating remotely shall not count towards establishing a quorum. All decisions taken during a meeting by teleconference shall be by rollcall vote. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.~~

~~(f) When a member of a state body described in subdivision (a) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or Internet Web site, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (a) that is available to the public.~~

~~(g) Upon discovering that a means of remote access required by subdivision (f) has failed during a meeting, the state body described in subdivision (a) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its Internet Web site and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.~~

~~(h) For purposes of this section:~~

~~(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.~~

~~(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.~~

~~(3) "Teleconference" has the same meaning as in Section 11123.~~

~~(i) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.~~

SEC. 5.
Section 11124 of the Government Code is amended to read:

11124.
(a) No person shall be required, as a condition to attendance at a meeting of a state body, to register ~~his or her~~ *the person's* name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to ~~his or her~~ *the person's* attendance.

(b) If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or *electronically posted, or* is circulated to persons present during the meeting, it shall state clearly that

the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(c) This section does not apply to an internet website or other online platform that may require identification to log into a teleconference.

SEC. 6.
Section 11125 of the Government Code is amended to read:

11125.
(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the ~~Internet~~ *state body's internet website* at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the ~~Internet site~~ *internet website* where notices required by this article are made available. *The notice shall specify the means by which a meeting may be accessed by teleconference in accordance with the requirements of subparagraph (C) of paragraph (1) of subdivision (b) of Section 11123, including sufficient information necessary to access the teleconference. The notice shall also specify any designated physical meeting location at which the public may observe and address the state body.*

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

~~(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.~~

~~(d)~~ *(c)* A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

~~(e)~~ *(d)* A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

~~(f)~~ *(e)* The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

(f) State bodies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

SEC. 7.
Section 11125.4 of the Government Code is amended to read:

11125.4.
(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.

(10) To deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by

newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the ~~Internet Web site~~ *internet website* where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the ~~Internet.~~ *state body's internet website.* Failure to adopt the finding terminates the meeting.

SEC. 8.
Section 11128.5 of the Government Code is amended to read:

11128.5.
The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and ~~place~~ *place, including by teleconference,* specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and ~~place and he or she~~ *place, including by teleconference, and the clerk or the secretary* shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on *the state body's internet website, and if applicable, on* or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

SEC. 9.
Section 11129 of the Government Code is amended to read:

11129.
Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on *the state body's internet website, and if applicable, on* or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

SEC. 10.
It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, and related executive orders, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 11.
This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect public health, expand access to government participation by the public, and increase transparency in state government operations during the COVID-19 pandemic, it is necessary that this act take effect immediately.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 18, 2022
TO	Board of Psychology
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #7(b)(3) – AB 2123 (Villapudua) Bringing Health Care into Communities Act of 2023

Background:
This bill, the Bringing Health Care into Communities Act of 2023, would establish the Bringing Health Care into Communities Program to be administered by the agency to provide housing grants to specified health professionals to be used for mortgage payments for a permanent residence in a health professional shortage area, as specified. Under the bill, a health professional would be eligible for a grant for up to 5 years. The bill would make its provisions operative upon appropriation by the Legislature.

On 3/25/2022 the Legislative and Regulatory Affairs Committee voted to recommend the Board take a **Support if Amended** position on AB 2123 (Villapudua). The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support AB 2123 on 4/29/2022.

Location: Assembly Committees on Housing and Community Development, and Health

Status: 4/29/22 – Failed Deadline pursuant to Rule 61(b)(5)

Calendar: 4/20/22 – Assembly-Dead

Action Requested:
This is for informational purposes only. No action is requested.

Attachment A: AB 2123 (Villapudua) Bill Text

AB 2123 (Villapudua) Bringing Health Care into Communities Act of 2023.

SECTION 1.

The Legislature finds and declares all of the following:

(a) California continues to experience shortages of health professionals, particularly *in primary care and* in areas declared to be health professional shortage areas.

(b) Individuals living in health professional shortage areas have reduced health outcomes due to the lack of availability of medical care.

(c) Incentivizing health professionals to own homes in those health professional shortage areas would encourage health professionals to become permanently tied to and serving those areas.

SEC. 2.

Chapter 9 (commencing with Section 50260) is added to Part 1 of Division 31 of the Health and Safety Code, to read:

CHAPTER 9. Bringing Health ~~care~~ *Care* into Communities Act of ~~2023.~~ *2023*

50260.

This act shall be known, and may be cited, as the Bringing Health Care into Communities Act of 2023.

50261.

(a) The Bringing Health Care into Communities Program is hereby established with the purpose of providing housing assistance grants in accordance with this chapter.

(b) The agency shall administer the program. The agency shall provide housing grants to health professionals listed in Section 50262 to be used for mortgage payments for a permanent residence in a health professional shortage area, as designated by the Office of Statewide Health Planning and Development in accordance with existing office guidelines.

(c) A health professional eligible for a grant pursuant to this chapter shall be eligible for up to five years.

(d) A health professional who begins receiving a housing grant based on residency in a health professional shortage area is eligible to continue to receive a housing grant pursuant to this chapter if that area is no longer a health professional shortage area but shall not receive a housing grant for more than five years.

50262.

The following health professionals are eligible for housing grants pursuant to this ~~chapter.~~ *chapter:*

(a) Primary care physicians.

(b) ~~Dentists.~~ *Primary care dentists.*

(c) Dental hygienists.

(d) ~~Physician~~ *Primary care physician* assistants.

(e) ~~Nurse~~ *Primary care nurse* practitioners.

(f) Certified ~~nurse midwives.~~ *nurse-midwives.*

(g) Pharmacists.

(h) Mental health providers.

(i) Behavioral health providers.

50263.

This chapter shall ~~be~~ *become* operative upon appropriation by the ~~Legislature.~~ *Legislature for the purpose of implementing the provisions of this chapter.*

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #7(b)(4) – AB 2754 (Bauer-Kahan) Psychology: supervising psychologists: qualifications

Background:
This bill allows the supervision of a registered psychological associate, to be provided through in-person or synchronous audiovisual means. This bill, an urgency statute, takes effect immediately.

On 3/25/2022 the Legislative and Regulatory Committee voted to recommend the Board take a **Support if Amended** position on AB 2754 (Bauer-Kahan).

Based on the author accepting the Board's amendments, the Board adopted a **Support** position on AB 2754 on 4/29/22.

Location: Senate Rules

Status: 5/19/22 – Read third time. Passed. Ordered to the Senate. (Ayes 72. Noes 0.) In Senate. Read first time. To Com. on RLS. for assignment.

Action Requested:
This is for informational purposes only. No action is requested.

Attachment A: AB 2754 (Bauer-Kahan) Analysis
Attachment B: AB 2754 (Bauer-Kahan) Assembly Appropriations Analysis
Attachment C: AB 2754 (Bauer-Kahan) Letter of Support
Attachment D: AB 2754 (Bauer-Kahan) Bill Text

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2022 Bill Analysis

Author:	Bill Number:	Related Bills:
Assembly Member Bauer-Kahan	AB 2754	
Sponsor:	**Version:**	
California Psychological Association (CPA)	Amended 4/27/22	
Subject:		
Psychology: supervising psychologists: qualifications.		

SUMMARY

This bill allows the supervision of a registered psychological associate, to be provided through in-person or synchronous audiovisual means, as specified. This bill, an urgency statute, takes effect immediately.

RECOMMENDATION

SUPPORT – On March 25, 2022, the Legislative and Regulatory Affairs Committee adopted a Support if Amended position per staff recommendation.

The author took the Board's amendments, and they went into print on April 27, 2022. On April 29, 2022, the full Board adopted a Support position.

REASON FOR THE BILL

According to the author: "The COVID-19 pandemic has exacerbated mental health conditions and as a result, there is a critical need for more mental health professionals. In addition, California is experiencing a dire shortage of mental health professionals and grappling with meeting this need. According to the Healthforce Center, California is on track to lose 41% of its psychiatrists and 11% of its psychologists in the next decade. This is on top of the existing scarcity."

"Under current law, psychology trainees in California are required to receive 3,000 hours of supervised professional experience as a condition to receive their license to practice. As part of those hours, trainees are required to be supervised by appropriate psychologist for 10% of the total time worked each week – and have at least one hour per week of face-to-face, direct, individual supervision with their primary supervisor."

This means that, at least once every week, during a two-year period, a trainee has no choice but to be in close quarters with another individual in the midst of a global health pandemic."

"In response, Governor Gavin Newsom temporarily waived face-to-face supervision and permitted supervision to be done remotely via HIPAA-compliant video. Despite the continued spread of COVID-19 and the risks associated with behavioral health

professionals working in close quarters, the emergency waiver was only extended until March 31, 2022, at which point it will expire."

"The face-to-face supervision waiver gave practitioners the ability to expand their capacity and protect their health without any negative impacts to patients. The Board of Psychology's continued extensions of the waiver highlights its efficacy. The COVID-19 pandemic illustrated advances in HIPAA-compliant video and practitioner demand for greater flexibility in practice and education."

"The face-to-face waiver alleviated public health constraints, reduced costs to practitioners, both trainees and supervisors, and resulted in increased practitioner availability and access."

"After March 31, 2022, psychology trainees will lose their ability to be supervised remotely, which puts an undue burden on their safety as well as time, costs and access to complete their training."

"AB 2754 codifies Executive Order N-39-20, the face-to-face waiver, and allows for supervision to transpire via audio and visual modalities. This flexibility will improve the safety and availability of training for a necessary workforce."

ANALYSIS

Psychology trainees in California are required to receive 3,000 hours of supervised professional experience as a condition to receive their license to practice. As part of those hours, trainees are required to be supervised 10% of the total time worked each week – and have at least one hour per week of face-to-face, direct, individual supervision with their primary supervisor. Face-to-face supervision is interpreted to mean in-person and in the same room.

On March 30, 2020, Governor Newsom signed Executive Order N-39-20, which allowed DCA to waive any of the professional licensing requirements and amend scopes of practice, including requirements governing the practice and permissible activities for licensees. This language in the waiver allowed the Board to waive face-to-face requirements for psychological supervision of registered psychological associates. This waiver expired on June 30, 2021. Beginning July 1, 2021, the Board provided a six-month grade period to allow the one-hour face-to-face, direct, individual supervision to be conducted through HIPAA-compliant video technology. The Board extended this grace period through March 31, 2022.

This bill is now self-executing and benefits the Board's 1,500 registered psychological associates, and countless individuals who are gaining hours necessary towards licensure while providing psychological services in accredited or approved academic institutions, public schools, governmental agencies, under a DHCS wavier, or through a predoctoral internship or postdoctoral placement.

The bill includes an urgency clause, which means if signed, it would take effect immediately. This would close the gap and eliminate the need for the waiver, as registered psychological associates would continue to be supervised remotely.

LEGISLATIVE HISTORY
Not Applicable.

OTHER STATES' INFORMATION
According to the Association of State and Provincial Psychological Boards (ASPPB), two states plus the District of Columbia had emergency regulations in place pertaining to remote supervision.

District of Columbia (D.C.)
The Department of Health has issued Administrative Orders to assist in the provision of health care services, including mental health services, during the public health emergency. In addition to those orders, the Board of Psychology issued Policy 2020-002 (6/25/2020) to allow for immediate supervision requirements to be accomplished via "real-time, synchronous communication between the supervisor and the supervisee through the use of appropriate real-time technology such as telephone or audiovisual telecommunication."

North Carolina
Executive Order 130 waived licensure requirements for behavioral health professionals, including: (i) psychologists who are licensed in another state with no prior disciplinary action; (ii) retired psychologists formally licensed in North Carolina with no prior disciplinary action; (iii) unlicensed individuals who have been awarded a master's degree or doctoral degree in psychology from a regionally accredited program that is not an online program, and who shall only provide psychological services as a volunteer; and (iv) individuals who are either currently enrolled or within the past three months completed a master's or doctoral program from a regionally accredited institution that is not an online program and has completed at least one year of an internship or practicum. Individuals practicing under Executive Order 130 may be required to receive supervision from a North Carolina licensed psychologist. The expiration has been extended until June 26, 2020 and may be further extended.

Ohio
At the psychologist's discretion, 90 practice days may be extended to supervisees with clients living in Ohio. Supervisees must practice psychology under supervision of the authorized psychologist in their home state.

PROGRAM BACKGROUND
The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists and registered psychological associates.

On March 30, 2020, Governor Newsom signed Executive Order N-39-20, which allowed DCA to waive any of the professional licensing requirements and amend scopes of practice, including requirements governing the practice and permissible activities for licensees. This language in the waiver allowed the Board to waive face-to-face requirements for psychological supervision of registered psychological associates. This waiver was extended multiple times since the Governor signed the Executive Order. This waiver is set to expire on March 31, 2022.

During the April 6, 2020 Board meeting, the Board noted their support for remote, HIPAA-compliant video psychological supervision if state and local health authorities recommended social distancing or mandated site closure where a trainee has been performing psychological functions under the immediate supervision of a primary supervisor.

FISCAL IMPACT
Not Applicable.

ECONOMIC IMPACT
Not Applicable.

LEGAL IMPACT
Not Applicable.

APPOINTMENTS
Not Applicable.

SUPPORT/OPPOSITION

Support: California Psychological Association (Sponsor)
California Association of Marriage and Family Therapists (CAMFT)
Association of Independent California Colleges and Universities (AICCU)
California Children's Hospital Association (CCHA)
Association of California Healthcare Districts (ACHD)
CaliforniaHealth+ Advocates
County Behavioral Health Directors Association (CBHDA)

Opposition: None.

ARGUMENTS

Proponents: California Psychological Association, sponsor of the bill, writes in support: "This bill ensures that trainees in the field of psychology receive their necessary training in a safe and timely manner by permanently allowing all supervision to be conducted via HIPAA-compliant video conferencing. California is experiencing a dire shortage of mental health professionals and is grappling with meeting this need. According to the Healthforce

Center at UCSF, California is on track to lose at least 11% of its psychologists in the next decade. This is on top of the existing scarcity, and workforce challenges exacerbated by the COVID-19 pandemic."

The California Association of Marriage and Family Therapists (CAMFT) writes in support of the bill: "The flexibility in the pandemic eliminated pre-licensee travel time to meet with their supervisor, which allowed them more time to see more patients. Supervisors could share materials on-screen in 'real time' when guiding their pre-licensees. Additionally, many pre-licensees had an opportunity to select a supervisor with their preferred specialty(s) that may reside in a different city in California."

Association of Independent California Colleges and Universities (AICCU) write in support of the bill: "One of the most important lessons learned from the pandemic is the usefulness of HIPAA compliant video to meet the needs of those in the field of delivering health care. At our colleges and universities, student affairs staff consistently found that students utilized virtual counseling during the pandemic, even after returning to in-person instruction. We believe that codifying a permanent solution to remote supervision supports the demand for psychological services while leveraging modern technology and protecting patients."

Opponents: None.

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 2754 (Bauer-Kahan) – As Amended April 27, 2022

Policy Committee: Business and Professions Vote: 17 - 0

Urgency: Yes State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill allows the supervision of an applicant for licensure as a psychologist, and of a registered psychological associate, to be provided through in-person or synchronous audiovisual means, as specified. This bill, an urgency statute, takes effect immediately.

FISCAL EFFECT:

No costs to the Board of Psychology.

COMMENTS:

1) **Purpose.** According to the author:

> AB 2754 ensures that trainees in the field of psychology receive necessary training in a safe and timely manner by extending supervision trainings to audio and [Health Insurance Portability and Accountability Act (HIPAA)]-compliant video conferencing.

2) **Background.** Psychology trainees in California are required to receive 3,000 hours of supervised professional experience as a condition of receiving their license to practice. Trainees are required to be supervised by an appropriate psychologist for 10% of the total time worked each week, and have at least one hour per week of face-to-face, direct, individual supervision with their primary supervisor. This means a trainee is currently required to be in close quarters with another individual, at least once every week for two years, even in the midst of a global health pandemic.

   In response, Governor Newsom temporarily waived face-to-face supervision and authorized remote supervision via HIPAA-compliant video, which gave practitioners the ability to expand their capacity and protect their health without negative impacts to patients. The emergency waiver expired on March 31, 2022.

Analysis Prepared by: Allegra Kim / APPR. / (916) 319-2081

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FLOOR ALERT

RE: AB 2754 (Bauer-Kahan) Psychology: supervision
SUPPORT

On April 29, 2022, the Board of Psychology (Board) voted to adopt a **SUPPORT** position on AB 2754 (Bauer-Kahan), as amended April 27th.

This bill would authorize the supervision of an applicant for licensure as a psychologist, and of a registered psychological associate, to be provided in "real time," which is defined as through in-person or synchronous audiovisual means, in compliance with federal and state laws related to patient health confidentiality. This bill also contains an urgency clause and would take effect immediately.

In the face of COVID-19, Governor Newsom temporarily waived face-to-face supervision via Executive Order N-39-20, which permitted supervision to be done remotely via HIPAA-compliant video. The Board strongly supports remote psychological supervision and has extended this waiver due to its efficacy. Remote psychological supervision gives practitioners the ability to expand their capacity and protect their health without any negative impacts to patients. AB 2754 will codify the face-to-face waiver to alleviate public health constraints, reduce costs to practitioners–both trainees and supervisors–and result in increased practitioner availability and access.

For these reasons, the Board requests that you vote **"AYE"** on AB 2574 when it comes before you on the Assembly Floor.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113 or Antonette.Sorrick@dca.ca.gov.

AB-2754 Psychology: supervising psychologists: qualifications – Amended 04/27/2022

SECTION 1.
Section 2913 of the Business and Professions Code is amended to read:

2913.
A person other than a licensed psychologist may perform psychological functions in preparation for licensure as a psychologist only if all of the following conditions are met:

(a) The person is registered with the board as a "registered psychological associate." This registration shall be renewed annually in accordance with regulations adopted by the board.

(b) (1) The person has completed or is any of the following:

(A) Completed a master's degree in psychology.

(B) Completed a master's degree in education with the field of specialization in educational psychology, counseling psychology, or school psychology.

(C) Is an admitted candidate for a doctoral degree in any of the following:

(i) Psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology.

(ii) Education, with the field of specialization in educational psychology, counseling psychology, or school psychology.

(iii) A field of specialization designed to prepare graduates for the professional practice of psychology after having satisfactorily completed three or more years of postgraduate education in psychology and having passed preliminary doctoral examinations.

(D) Completed a doctoral degree that qualifies for licensure under Section 2914.

(2) The board shall make the final determination as to whether a degree meets the requirements of this subdivision.

(c) (1) The registered psychological associate is supervised by a licensed psychologist. *Any supervision may be provided in real time, which is defined as through in-person or synchronous audiovisual means, in compliance with federal and state laws related to patient health confidentiality.* The registered psychological associate's primary supervisor shall be responsible for ensuring that the extent, kind, and quality of the psychological services performed are consistent with the registered psychological associate's and the primary supervisor's training and experience. The primary supervisor shall be responsible for the registered psychological associate's compliance with this chapter and regulations. A primary supervisor may delegate supervision as prescribed by the board's regulations.

(2) A licensed psychologist shall not supervise more than three registered psychological associates at any given time.

(d) A registered psychological associate shall not do either of the following:

(1) Provide psychological services to the public except as a trainee pursuant to this section.

(2) Receive payments, monetary or otherwise, directly from clients.

~~SECTION 1.~~*SEC. 2.*
Section 2914 of the Business and Professions Code is amended to read:

2914.
(a) An applicant for licensure shall not be subject to denial of licensure under Division 1.5 (commencing with Section 475).

(b) (1) On and after January 1, 2020, an applicant for licensure shall possess an earned doctoral degree in any of the following:

(A) Psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology.

(B) Education with the field of specialization in counseling psychology, educational psychology, or school psychology.

(C) A field of specialization designed to prepare graduates for the professional practice of psychology.

(2) (A) Except as provided in subparagraph (B), the degree or training obtained pursuant to paragraph (1) shall be obtained from a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education.

(B) Subparagraph (A) does not apply to any student who was enrolled in a doctoral program in psychology with the field of specialization in clinical, counseling, school, consulting, forensic, industrial, or organizational psychology or in education with the field of specialization in counseling psychology, educational psychology, or school psychology at a nationally accredited or approved institution as of December 31, 2016.

(3) The board shall make the final determination as to whether a degree meets the requirements of this subdivision.

(4) Until January 1, 2020, the board may accept an applicant who possesses a doctoral degree in psychology, educational psychology, or in education with the field of specialization in counseling psychology or educational psychology from an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is approved to operate in this state by the Bureau for Private

Postsecondary Education on or before July 1, ~~1999~~ *1999,* and has not, since July 1, 1999, had a new location, as described in Section 94823.5 of the Education Code.

(5) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that the applicant possesses a doctoral degree in psychology or education as specified in paragraphs (1) and (2) that is equivalent to a degree earned from a regionally accredited academic institution in the United States or Canada by providing the board with an evaluation of the degree by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), or by the National Register of Health Services Psychologists (NRHSP), and any other documentation the board deems necessary. The member of the NACES or the NRHSP shall submit the evaluation to the board directly and shall include in the evaluation all of the following:

(A) A transcript in English, or translated into English by the credential evaluation service, of the degree used to qualify for licensure.

(B) An indication that the degree used to qualify for licensure is verified using primary sources.

(C) A determination that the degree is equivalent to a degree that qualifies for licensure pursuant to paragraphs (1) and (2).

(c) (1) An applicant for licensure shall have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall have occurred after the applicant was awarded the qualifying doctoral degree. *Any supervision may be provided in real time, which is defined as through in-person or synchronous audiovisual means, in compliance with federal and state laws related to patient health confidentiality.* The supervisor shall submit verification of the experience to the trainee as prescribed by the board. If the supervising licensed psychologist fails to provide verification to the trainee in a timely manner, the board may establish alternative procedures for obtaining the necessary documentation. Absent good cause, the failure of a supervising licensed psychologist to provide the verification to the board upon request shall constitute unprofessional conduct.

(2) The board shall establish qualifications by regulation for supervising psychologists.

(d) An applicant for licensure shall take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) An applicant for licensure shall complete coursework or provide evidence of training in the detection and treatment of alcohol and other chemical substance dependency.

(f) An applicant for licensure shall complete coursework or provide evidence of training in spousal or partner abuse assessment, detection, and intervention.

SEC. 3.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve access to psychological care by allowing continued real time supervision of registered psychological associates and licensed psychologist applicants, including synchronous audiovisual means that comply with federal and state laws related to patient health confidentiality, it is necessary for this act to take effect immediately.

California Board of PSYCHOLOGY

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #7(b)(5) – SB 1365 (Jones) Licensing boards: procedures.

Background:
This bill would require each board within the Department of Consumer Affairs (DCA) to publicly post on its internet website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees. The bill would require DCA to establish a process to assist each board in developing its internet website.

The bill would also require DCA to develop a process for each board to use in verifying applicant information and performing background checks of applicants, and would require that process to require applicants with convictions to provide certified court documents instead of listing convictions on application documents. The bill would further require each Board to develop a procedure to provide an informal appeals process that would occur between an initial license denial and an administrative law hearing.

On 3/25/2022 the Legislative and Regulatory Affairs Committee voted to recommend the Board take an **Oppose** position on SB 1365 (Jones). On 4/29/2022, the full Board adopted the Legislative and Regulatory Affairs Committee's oppose recommendation.

Location: Senate Appropriations Committee

Status: 5/20/2022 – Failed Deadline

Action Requested:
This is for information purposes only. No action is requested.

Attachment A: SB 1365 (Jones) – Letter of Opposition
Attachment B: SB 1365 (Jones) – Bill Text

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May 13, 2021

The Honorable Anthony Portantino
Chair, Senate Committee on Appropriations
State Capitol, Room 412
Sacramento, CA 95814

RE: SB 1365 (Jones) Licensing boards: procedures - OPPOSE

Dear Chair Portantino,

On April 29, 2022, the Board of Psychology (Board) voted to adopt an **OPPOSE** position on SB 1365 (Jones), as this bill has raised numerous concerns.

This bill would require each entity within the Department of Consumer Affairs (DCA), including the Board, to publicly post on its website a list of criteria used to evaluate applicants with criminal convictions. It would require DCA to assist each board in developing an informal appeals process and disseminate materials to each board on assisting applicants with criminal convictions to gain employment, as specified.

The Board has serious concerns about the “appeals process.” The bill would require the Board to establish an informal appeals process between initial licensure denial and an administrative law hearing. The bill encourages DCA to examine the process used by the Bureau of Security and Investigative Services, (BSIS). For context, BSIS has multiple Disciplinary Review Committees (DRC), which handle denials, revocations, or suspensions of a license, certificate, registration or permits. There are five DRCs total for the professions that BSIS regulates. Each DRC has five members and BSIS pays each member $100 per diem each time the committee meets, along with an additional $100 for reading the relevant materials ahead of time. Additionally, DRCs convene more frequently than the Board, and for example, one DRC convened 17 times in 2021.

This disciplinary review process works for BSIS, since they have a larger number of applicants with criminal histories and issue a high number of denials annually. If this system were in place with the Board, it could be very costly and not the most efficient way of handling the Board’s average of 3.6 denials per year, especially since the Board is experiencing a structural imbalance with insolvency expected on July 1, 2024.

This bill would also require DCA to develop a process to expedite the fee-waiver process for any low-income applicant requesting a background check. Currently, the Board requires both a Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) criminal history background check on all licensees, registrants and applicants for licensure or registration. Applicants in California complete a "Live Scan,” which is a

system for the electronic submission of fingerprints through the DOJ. The process requires applicants to go to a Live Scan site for fingerprint scanning services. The cost of this process is paid to the Live Scan site directly. Additionally, this bill does not have a definition of “low-income.” As the Board is currently facing insolvency and rightsizing a structural imbalance, the Board cannot afford to pay for fingerprint waivers.

Finally, the Board has additional policy concerns, including overall lack of clarity in the language regarding what exactly needs to be posted to the Board’s website, as well as concerns with changing the documentation used to review an applicant’s criminal history.

For these reasons, the Board respectfully requests that you vote to keep SB 1365 on the Suspense File when it comes before you in committee.

If you have any questions or concerns, please feel free to contact the Board’s Executive Officer, Antonette Sorrick, at (916) 574-7113 or Antonette.Sorrick@dca.ca.gov. Thank you.

Sincerely,

Lea Tate, Psy.D.
President, Board of Psychology

cc: Senator Brian Jones
Senator Patricia Bates (Vice Chair)
Members of the Senate Committee on Appropriations
Janelle Miyashiro, Consultant, Senate Committee on Appropriations
Jessica Billingsley, Consultant, Senate Republican Caucus

SB-1365 Licensing boards: procedures

SECTION 1.
Section 114.6 is added to the Business and Professions Code, to read:

114.6.
(a) Each board within the department shall publicly post on its internet website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees.

(b) The department shall do all of the following:

(1) (A) Establish a process to assist each board in developing its internet website in compliance with subdivision (a).

(B) As part of this process, the department shall disseminate materials to, and serve as a clearing house to, boards in order to provide guidance and best practices in assisting applicants with criminal convictions gain employment.

(2) (A) Develop a process for each board to use in verifying applicant information and performing background checks of applicants.

(B) In developing this process, the board may examine the model used for performing background checks of applicants established by the Department of Insurance. The process developed shall require applicants with convictions to provide certified court documents instead of listing convictions on application documents. This process shall prevent license denials due to unintentional reporting errors. This process shall also include procedures to expedite the fee-waiver process for any low-income applicant requesting a background check.

(3) (A) Develop a procedure to provide for an informal appeals process.

(B) In developing this informal appeals process, the department may examine the model for informal appeals used by the Bureau of Security and Investigative Services. The informal appeals process shall occur between an initial license denial and an administrative law hearing.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Suzy Costa Legislative and Regulatory Analyst
SUBJECT	Agenda Item #7(b)(6) – SB 1428 (Archuleta) Psychologists: psychological testing technician: registration.

Background:
This bill would authorize an individual to provide psychological or neuropsychological test administration and scoring services, if that individual is registered with the Board as a psychological testing technician and meets specified education requirements, or if the individual is gaining specified education requirements to be a psychological testing technician.

On 3/25/2022 the Legislative and Regulatory Affairs Committee voted to recommend the Board take a **Support if Amended** position on SB 1428 (Archuleta). The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support SB 1428, if amended, on 4/29/2022.

The author took the Board's suggested amendments on 5/23/2022, with one note of difference: When Board staff wrote the proposed amendments, consideration was not taken for the fact that unregistered people need to complete hours and experience to become registered as psychological testing technicians. Within Business and Professions Code section 2999.101(c)(3), the bill provides that a person engaged in gaining the experience can administer and score psychological and neuropsychological tests.

As Board staff did not have this language included in the Board-approved amendments, Board staff is requesting an updated position from the Legislative and Regulatory Affairs Committee.

Location: Senate Floor

Status: Senate Third Reading

Action Requested:
Due to the amendments taken by the author, Board staff recommends the Legislative and Regulatory Affairs Committee take a **Support** position on SB 1428.

Attachment A: SB 1428 (Archuleta) Analysis
Attachment B: SB 1428 (Archuleta) Senate Floor Analysis
Attachment C: SB 1428 (Archuleta) Support if Amended Letter
Attachment D: SB 1428 (Archuleta) Bill Text

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2022 Bill Analysis

Author:	Bill:	Related Bills:
Senator Bob Archuleta	SB 1428	
Sponsor:	**Version:**	
California Psychological Association (CPA)	Amended 05/23/22	
Subject:		
Psychologists: psychological testing technician: registration		

SUMMARY

This bill would authorize an individual to provide psychological or neuropsychological test administration and scoring services, if that individual is registered with the board as a psychological testing technician and meets specified education requirements, or if the individual is gaining specified education requirements to be a psychological testing technician.

RECOMMENDATION

SUPPORT – On March 25, 2022, the Legislative and Regulatory Affairs Committee adopted a Support if Amended position per staff recommendation. The Board voted to approve the Legislative and Regulatory Affairs Committee's recommendation to support SB 1428, if amended, on April 29, 2022.

On May 23, 2022, the author amended the bill on the Senate Floor to include the Board's amendments, plus one amendment that the Board did not review (please see the analysis section for more details). As Board staff did not have that additional language included in the Board-approved amendments, Board staff is recommending a **Support** position on SB 1428 (Archuleta).

This bill would create a new registration, increase the Board staff's workload, and amend our Psychological Licensing Act. The bill as amended, includes further clarification on requirements pertaining to education, registration, renewal, supervision, implementation date, and enforcement, including fees related to psychological testing technicians.

REASON FOR THE BILL

Per the sponsor: "The use of technicians primarily allows the psychologist to utilize their time more efficiently and productively, freeing them to engage in the interpretation of the results while also being able to provide additional services that require their specified skill-set, such as: providing psychotherapy or cognitive rehabilitation, treatment planning, psychoeducational services, engaging in research, supervising psychological assistants, and providing multidisciplinary consultations. Without employing technicians, the majority of the psychologist's time is expended in the administration and scoring of

standardized tests, which is a task that can be done by an appropriately-trained individual with a minimum of a bachelor's degree."

Additionally, the sponsor states, "The use of psychological technicians has been a nationally established standard of practice in the field for more than almost five decades… Furthermore, the Current Procedural Terminology (CPT) codes that are accepted by medical insurance companies recognize billings codes that are uniquely specific to using a technician to administer and score neuropsychological testing (96138-96139), which is separate from a code that is used when a neuropsychologist performs their direct services (96136-96137). The Centers for Medicare and Medicaid Services (CMS) manual indicates that psychologists are able to allow technicians to perform psychological services, pursuant to state laws and regulations."

"In short, the use of technicians has been well-established nationally in the field of psychology, and other states have incorporated standards in their legislative documents to define the proper use of technicians."

ANALYSIS

This bill adds section 2999.100 of the Business and Professions Code (BPC) to create a new registration within the Board for psychological testing technicians. It establishes what a testing technician can do as a registrant under the purview of the Board. It includes further clarification on requirements pertaining to education, registration, renewal, supervision, implementation date, and enforcement, including fees related to psychological testing technicians.

Specifically, this bill does the following:

- Establishes application requirements to register as a psychological testing technician, such as sharing name, contact information, supervisor contact information, proof of education and training, and paying a fee.
- Provides clarity on the educational and training requirements for registration.
- Establishes requirements for an applicant to submit electronic fingerprint image scans for a state- and federal-level criminal background check conducted through the Department of Justice.
- Provides clarifying language on enforcement activities surrounding psychological testing technician registrants.
- Establishes an annual renewal period.
- Establishes a process to renew registration.
- Establishes a process to add or change a supervisor.
- Establishes an exemption that specified licensed psychologists and registered psychological associates from registering as a psychological testing technician to administer tests.
- Sets a psychological testing technician registration fee.
- Sets an annual renewal fee of $75.
- Sets a $25 fee allowing a psychological testing technician to add or change a supervisor.

- Establishes an implementation date.

The bill sponsor presented the bill idea to the Board in April 2019. At that meeting, Board Members stated they were supportive of the concept and understood the need for the bill. Board staff has provided technical assistance to the sponsor in the process of drafting the bill.

There is one note of difference between the Board's proposed amendments and what is in print: when Board staff wrote the proposed amendments, consideration was not taken for the fact that unregistered people need to complete hours and experience to become registered as psychological testing technicians. Within BPC section 2999.101(c)(3), the bill provides that a person engaged in gaining the experience can administer and score psychological and neuropsychological tests.

LEGISLATIVE HISTORY
Not Applicable

OTHER STATES' INFORMATION
Currently, Arkansas, New York, North Carolina, and Oregon have laws in place providing registration and oversight of psychological testing technicians.

Arkansas
Has requirements in place for neuropsychological technicians. The law requires a supervising psychologist to be approved by the Arkansas Psychology Board to practice neuropsychology (independently); to have at least three (3) years of post-licensure experience and had training or experience, or both, in supervision; to be ethically and legally responsible for all the professional activities of the technician; and to have adequate training, knowledge, and skill to render competently any neuropsychological service which the employed technician undertakes. Each psychologist and neuropsychological technician must have their applications and credentials approved by the Board during a meeting. Neuropsychological technicians must annually renew their registration by June 30th of every year.

New York
Allows testing technicians, who meet certain specified requirements, to administer and score standardized objective (non-projective) psychological or neuropsychological tests which have specific predetermined and manualized administrative procedures which entail observing and describing test behavior and test responses, and which do not require evaluation, interpretation or other judgments. Such testing technicians may provide services in those settings that may legally engage in the practice of psychology and they must be supervised by a licensed psychologist, who must attest to such supervision, as well as to the education and training of the testing technicians, as prescribed in statute. All licensed psychologists who use a testing technician must complete the form entitled "Licensed Psychologist Attestation of Supervision of a Testing Technician" and submit it to the Department before providing the activities or services of the testing technician.

North Carolina
Allows unlicensed individuals to perform tasks related to psychological testing, upon determination by a licensed psychologist that the individual can perform the tasks, given the client or patient's characteristics and circumstances, in a manner consistent with the unlicensed individual's training and skills. A psychologist who employs or supervises unlicensed individuals to provide the services described shall comply with documentation and supervision requirements.

Oregon
A licensee may delegate administration and scoring of tests to technicians if the licensee ensures the technicians are adequately trained to administer and score the specific test being used. The licensee must also ensure that the technicians maintain standards for the testing environment and testing administration as set forth in the APA Standards for Educational and Psychological Tests (1999) and APA Ethical Principles for Psychologists (2002).

PROGRAM BACKGROUND
The Board protects consumers of psychological services by licensing psychologists, regulating the practice of psychology, and supporting the evolution of the profession. To accomplish this, the Board regulates licensed psychologists and registered psychological associates.

The Board is responsible for reviewing applications, verifying education and experience, as well as issuing licensure, registrations, and renewals.

FISCAL IMPACT
Based on the amendments from May 23, 2022, the bill no longer has a fiscal impact on the Board because the new fees cover the cost of the work to implement this bill.

ECONOMIC IMPACT
Not Applicable

LEGAL IMPACT
Not Applicable

APPOINTMENTS
Not Applicable

SUPPORT/OPPOSITION

Support: California Psychological Association (Sponsor)
County Behavioral Health Directors Association
National Union of Healthcare Workers

Opposition: None on File

ARGUMENTS

Proponents: According to the California Psychological Association, “the use of technicians allows the psychologist to utilize their time more efficiently and productively, freeing them to engage in the interpretation of the test results, develop an appropriate treatment plan, and work directly with patients.”

Opponents: None on File

SENATE RULES COMMITTEE SB 1428
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1428
Author: Archuleta (D), et al.
Amended: 5/23/22
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 12-0, 4/4/22
AYES: Roth, Melendez, Archuleta, Bates, Becker, Eggman, Hurtado, Leyva, Min, Newman, Ochoa Bogh, Pan
NO VOTE RECORDED: Dodd, Jones

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Psychologists: psychological testing technician: registration

SOURCE: California Psychological Association

DIGEST: This bill requires an individual performing psychological or neuropsychological tests to register as a psychological testing technician (PTT) with the Board of Psychology (Board) and renew their registration every year; requires PTTs to obtain a bachelor's degree and complete 80-hours of specified training; and permits the Board to charge a fee for registration.

Senate Floor Amendments of 5/23/22 delay implementation, further define what PTTs may do, specify a registration process administered by the Board, add supervision requirements, and specify responsibilities of supervisors.

ANALYSIS:

Existing law:

1) Establishes the Board within the Department of Consumer Affairs (DCA), responsible for the licensure and regulation of psychologists, and prohibits a person from engaging in the practice of psychology or representing oneself as a psychologist without a license issued by the Board, unless specifically exempted. (Business Professions Code (BPC) § 2900 *et seq.)*

2) Defines the practice of psychology as: rendering or offering to render to individuals, groups, organizations, or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations. (BPC § 2903)

This bill:

1) Creates a new registration for PTTs effective January 1, 2024.

2) Defines a PTT as an individual that can provide psychological and neuropsychological testing who is registered with the Board and can administer and score standardized objective psychological and neuropsychological tests and observe and describe clients' test behavior and test responses.

3) Prohibits a PTT from selecting tests, interpreting testing results, writing test reports or providing test feedback to clients.

4) Specifies that PTTs may only use the terms "psychological testing technician" or "neuropsychological testing technician."

5) Establishes a registration process for a PTT and requires specified information to be submitted to the Board.

6) Requires PTTs to have a bachelor's or graduate degree in psychology, educational psychology, counseling psychology or school psychology, or enrolled in a current graduate degree program.

7) Requires a PTT to complete a minimum of 80 hours, with specified topics, of education and training in psychological or neuropsychological test administration and scoring. The 80 hours may be done in an individual or group instruction provided by a licensed psychologist, engaging in independent learning, completion of graduate-level coursework, taking continuing education as defined in BPC § 2915.

8) Requires all PTTs to be under the direct supervision of a licensed psychologists. The supervisor must be:

a) Employed by the same work setting as the PTT.

b) Available in-person, by telephone or by other appropriate technology.

c) Responsible for the ensuring that the extent, kind, and quality of the services that the psychological testing technician provides are consistent with the psychological testing technician's training and experience, monitoring the PTT is in compliance with laws and regulations, and informing the client that a PTT will be rendering services.

9) Requires a PTT to notify the Board of any changes to their direct supervisor, submit specified information about their added supervisor, and pay a fee

10) Requires a PTT to annually renew their registration with the Board and submit the following:

a) The registrant's name, registration number, and contact information.

b) The supervisor's name, license number, and contact information.

c) Disclosure of any conviction of any violation of the law in this or any other state, the United States or its territories, military court, or other country, omitting traffic infractions under five hundred dollars not involving alcohol, a dangerous drug, or a controlled substance, since the issuance or previous renewal of their registration.

d) Disclosure if the registrant has had a license or registration disciplined by a governmental agency or other disciplinary body, since the issuance or previous renewal of their registration.

e) Attestation under penalty of perjury that the information provided on the application is true and correct.

f) The annual renewal fee

Background

Board of Psychology. The Board regulates licensed psychologists, psychological assistants, and registered psychologists through the enforcement of the Psychology Licensing Law. Broadly, only licensed psychologists can practice psychology independently in California. Registered psychologists are registrants who work and train under supervision in non-profit agencies that receive government funding. Finally, psychological assistants provide psychological services under the supervision of a qualified licensed psychologist or board-certified psychiatrist,

generally to accrue the necessary supervised hours to obtain full licensure as a psychologist.

The Board reported in its 2020 sunset review report to the Legislature that it was experiencing a notable increase in the average time to process complete applications and a significant increase in the average time to process incomplete applications in the past three fiscal years. Additionally, the number of pending applications outpaced completed applications. It is unknown how many new registrant applications the Board will receive as a result of this bill.

Neuropsychological and psychological testing. A neuropsychological evaluation is a test to measure how well a person's brain is working. The abilities tested include reading, language usage, attention, learning, processing speed, reasoning, remembering, problem-solving, mood and personality. On average, these tests take 6-8 hours to perform.

Center for Medicare and Medicaid Services (CMS) currently allows for technicians to perform psychological services. According to CMS, "Psychological testing requires a clinically trained examiner." (CMS Publication 100-02: Medicare Benefit Policy Manual, Chapter 15, §80.2) The Author reports CMS guidelines are one of the primary purposes for creating a registration process. However, a clinically trained examiner is not further defined and, other states are currently using testing technicians without registration.

Currently, PTTs serve as an aide in order to increase access to services by delegating or outsourcing tasks that do not need a psychologist. Current California law does not prohibit the use of testing technicians and, in fact, already allows certain professional licensees the ability to do this work. It is unclear how many people are currently providing this service. Psychology students, psychological assistants, psychology trainees, licensed professional clinical counselors (LPCCs), licensed marriage and family therapists (LMFTs), and licensed clinical social workers (LCSWs) can already do this work without registering with the Board or completing the 80 hours of additional training that this bill prescribes. LMFTs and LPCCs both receive some training in psychological testing as a requirement of licensure. The Author reports there are limitations to what LMFTs and LPCC can assess. However, the National Academy of Neuropsychology (NAN) indicate that a minimum of a bachelor's degree and training should be required as part of national standards. These license types all have a minimum of a master's degree so by the NAN standards should be qualified to perform these tests. As it is currently written, this bill does not provide a pathway for other licensed behavioral health

providers to offer these critical testing services, services which they are currently performing.

California law currently does not prohibit the use of testing technicians but as a result of this bill, individuals performing certain tests will have to register with the Board. This bill does not address the impact to current professionals and their future in this career with additional requirements.

Education. The American Psychological Association's Model Act for State Licensure of Psychologists suggests that states adopt the following:

> *Nothing in this section shall be construed to apply to any person other than ... (c) a qualified assistant, technician, or associate employed by, or otherwise directly accountable to, a licensed psychologist. Such individuals may, among other things, administer and score neuropsychological tests at the request of the supervising psychologist, but may not interpret such tests. The Board in regulations shall determine the number of assistants, technicians and associates that a psychologist may employ and the conditions under which they will be supervised.*

The above is far less cumbersome for PTTs than the requirements of this bill. This bill adds 80-hours of additional education with a registration process. It is unclear the added value for these additional requirements that differ from the national standard.

While other states allow for on-the-job training for PTTs, this bill specifies education prior to registration. On-the-job training is a tool used to remove barriers to entry and ensure professionals are paid for their work.

Licensure, Recognition and Regulation. A number of regulatory entities currently have both a licensure process and scheme and a registration pathway for different providers and individuals. Even a registration requirement carries a number of steps for a regulatory program to undertake in order to ensure an individual can receive registration. While this bill establishes a registration requirement, it does not outline all of the various parameters by which the Board would actually register people, including, some of the necessary aspects of the application process like background checks, registration renewal steps, an assessment of the cost for registration and how to capture the related workload in the form of fees, and the enforcement of registered PTTs. Clear guidelines and standards currently absent in the measure are key to achieving the goal of registering PTTs.

Recent studies and reports have focused on the impacts of licensing requirements for employment and on individuals seeking to become employed. According to a July 2015 report on occupational licensing released by the White House, strict licensing creates barriers to mobility for licensed workers, citing several groups of people particularly vulnerable to occupational licensing laws, including former offenders, military spouses, veterans and immigrants.

In October 2016, the Little Hoover Commission released a report entitled *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*. The report noted that one out of every five Californians must receive permission from the government to work, and for millions of Californians that means contending with the hurdles of becoming licensed. The report noted that many of the goals to professionalize occupations, standardize services, guarantee quality and limit competition among practitioners, while well intended, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers. The study found that occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach.

The report found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. According to the report, researchers from the Institute for Justice selected 102 lower-income occupations, defined by the Bureau of Labor Statistics as making less than the national average income, ranging from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62, or 61 percent of them. According to the report, California ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: on average, Californians typically pay about $300 in licensing fees, spend 549 days in education and/or training and pass one exam. This bill could result in unintended consequences of providing barriers to entry to an existing profession, with services performed by existing professionals.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/23/22)

California Psychological Association (source)

County Behavioral Health Directors Association
National Union of Healthcare Workers

OPPOSITION: (Verified 5/23/22)

None received

ARGUMENTS IN SUPPORT: According to the California Psychological Association, "the use of technicians allows the psychologist to utilize their time more efficiently and productively, freeing them to engage in the interpretation of the test results, develop an appropriate treatment plan, and work directly with patients."

Prepared by: Alexandria Smith Davis / B., P. & E.D. /
5/24/22 16:27:32

****** END ******

California Board of PSYCHOLOGY

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FLOOR ALERT

RE: SB 1428 (Archuleta) – Psychological testing technician: registration
SUPPORT IF AMENDED

At its April 29, 2022, meeting, the Board of Psychology (Board) adopted a **SUPPORT IF AMENDED** position on SB 1428 (Archuleta). This bill would authorize an individual to provide psychological or neuropsychological test administration and scoring services, if that individual is registered with the Board as a psychological testing technician and meets specified education requirements, or if the individual is gaining specified education requirements to be a psychological testing technician.

The bill as written needs further clarification on requirements pertaining to education, registration, renewal, supervision, and enforcement, including fees related to psychological testing technicians. The Board's proposed amendments achieve the following:

- Creates the Psychological Testing Technician Act within new code sections.
- Establishes the application process and requirements to register as a psychological testing technician.
- Clarifies the educational and training requirements for registration.
- Requires an applicant to submit electronic fingerprint image scans for a state- and federal-level criminal background check conducted through the Department of Justice.
- Incorporates enforcement provisions related to psychological testing technicians.
- Requires a psychological testing technician to renew registration annually.
- Establishes the process to renew registration.
- Establishes the process to add or change a supervisor.
- Exempts specified licensed psychologists and registered psychological associates from registering as a psychological testing technician in order to provide testing services.
- Increases the psychological testing technician registration fee to $75.
- Establishes an annual renewal fee of $75.
- Establishes a $25 fee for adding or changing a supervisor.
- Establishes an implementation date of January 1, 2024.

We understand the author has submitted the Board's proposed amendments to counsel for consideration, with the sponsor's approval. The Board understands that the author will take up the bill with these amendments on the Senate Floor before the House of Origin deadline.

For these reasons, the Board asks for a **"AYE" vote on SB 1428 (Archuleta), once amended,** when it is heard on the Senate Floor.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113 or via email at Antonette.Sorrick@dca.ca.gov.

SB-1428 Psychologists: psychological testing technician: registration – Amended 05/23/2022

SECTION 1.
Article 10 (commencing with Section 2999.100) is added to Chapter 6.6 of Division 2 of the Business and Professions Code, to read:

Article 10. Psychological Testing Technicians
2999.100.
(a) "Psychological testing technician" means an individual not otherwise authorized to provide psychological and neuropsychological testing under this chapter who is registered with the board and is authorized to perform the following functions:

(1) Administer and score standardized objective psychological and neuropsychological tests.

(2) Observe and describe clients' test behavior and test responses.

(b) A psychological testing technician shall not perform the following functions:

(1) Select tests or versions of tests.

(2) Interpret test results.

(3) Write test reports.

(4) Provide test feedback to clients.

(c) A psychological testing technician shall only use the titles "psychological testing technician" or "neuropsychological testing technician." A psychological testing technician shall not use the title "psychologist" or any title incorporating the word "psychologist."

(d) Failure to comply with this section shall be grounds for disciplinary action.

2999.101.
To register as a psychological testing technician, a person shall submit the following to the board:

(a) An application that includes the following information:

(1) The applicant's name, identification, and contact information.

(2) The applicant's supervisor's name, license number, and contact information.

(3) Attestation under penalty of perjury that the information provided on the application is true and correct.

(b) Proof of completion of a bachelor's degree or graduate degree, or proof of current enrollment in a graduate degree program, from a regionally accredited university, college, or professional school, in either of the following subjects:

(1) Psychology.

(2) Education, with the field of specialization in educational psychology, counseling psychology, or school psychology.

(c) (1) Proof of completion of a minimum of 80 hours total of education and training relating to psychological or neuropsychological test administration and scoring that includes the following:

(A) At least 20 hours of direct observation, including at least 10 hours of direct observation of a licensed psychologist administering and scoring tests, and at least 10 hours of direct observation of either a licensed psychologist or registered psychological testing technician administering and scoring tests.

(B) At least 40 hours of administering and scoring tests in the presence of a licensed psychologist.

(C) At least 20 hours of education on topics including law and ethics, confidentiality, and best practices for test administration and scoring.

(2) Education and training may be obtained by doing any combination of the following:

(A) Participating in individual or group instruction provided by a licensed psychologist.

(B) Engaging in independent learning directed by a licensed psychologist.

(C) Completing graduate-level coursework at a regionally accredited university, college, or professional school.

(D) Taking continuing education courses from organizations with board approval pursuant to Section 2915.

(3) Nothing in this chapter shall prevent a person engaged in gaining the experience required by this subdivision from administering and scoring psychological and neuropsychological tests.

(d) The registration fee for a psychological testing technician as specified in Section 2987.

(e) Electronic fingerprint image scans for a state- and federal-level criminal offender record information search conducted through the Department of Justice.

2999.102.

(a) All psychological testing technician services shall be provided under the direct supervision of a licensed psychologist.

(b) A supervisor of psychological testing technicians shall satisfy all of the following requirements:

(1) Be employed by, or contracted to, the same work setting as the psychological testing technician they are supervising.

(2) Be available in-person, by telephone, or by other appropriate technology at all times the psychological testing technician provides services.

(3) Be responsible for all of the following:

(A) Ensuring that the extent, kind, and quality of the services that the psychological testing technician provides are consistent with the psychological testing technician's training and experience.

(B) Monitoring the psychological testing technician's compliance with applicable laws and regulations.

(C) Informing the client prior to the rendering of services by a psychological testing technician that the technician is registered as a psychological testing technician and is functioning under the direction and supervision of the supervisor.

(c) A psychological testing technician shall notify the board of any change to their direct supervisor. To add or change a supervisor, a psychological testing technician shall submit the following:

(1) Registrant's name, registration number, and contact information.

(2) New or additional supervisor's name, license number, and contact information.

(3) Current supervisor's name, license number, and contact information.

(4) Attestation under penalty of perjury that the information provided on the application is true and correct.

(5) The fee to add or change a supervisor for a psychological testing technician, as specified in Section 2987.

2999.103.
(a) A psychological testing technician shall renew their registration annually by submitting the following to the board:

(1) The registrant's name, registration number, and contact information.

(2) The supervisor's name, license number, and contact information.

(3) Disclosure as to whether or not the registrant has been convicted of any violation of the law in this or any other state, the United States or its territories, military court, or other country, omitting traffic infractions under five hundred dollars ($500) not involving alcohol, a dangerous drug, or a controlled substance, since the issuance or previous renewal of their registration.

(4) Disclosure as to whether or not the registrant has had a license or registration disciplined by a governmental agency or other disciplinary body, since the issuance or previous renewal of their registration. Discipline includes, but is not limited to, suspension, revocation, voluntary surrender, probation, reprimand, or any other restriction on a license or registration held.

(5) Attestation under penalty of perjury that the information provided on the application is true and correct.

(6) The annual renewal fee for a psychological testing technician as specified in Section 2987.

(b) Without renewal, a psychological testing technician registration expires annually. If the registration expires, then the person who was registered:

(1) Shall not provide psychological testing technician services.

(2) Shall renew within 60 days after its expiration and pay the renewal and delinquency fees as specified in Section 2987, or the registration shall be canceled and a new application for registration shall be submitted to the board.

2999.104.
Nothing in this article shall be construed to expand or constrict the scope of practice of a person who is licensed under any other provision of this division.

2999.105.
This article shall become operative on January 1, 2024.

SEC. 2.
Section 2987 of the Business and Professions Code is amended to read:

2987.
The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars ($50).

(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall be four hundred dollars ($400). The board may increase the renewal fee to an amount not to exceed five hundred dollars ($500).

(e) The application fee for registration as a registered psychological associate under Section 2913 shall not be more than seventy-five dollars ($75).

(f) The annual renewal fee for registration of a psychological ~~assistant~~ *associate* shall not be more than seventy-five dollars ($75).

(g) The duplicate license or registration fee is five dollars ($5).

(h) The delinquency fee is 50 percent of the renewal fee for each license type, not to exceed one hundred fifty dollars ($150).

(i) The endorsement fee is five dollars ($5).

(j) The file transfer fee is ten dollars ($10).

(k) The registration fee for a psychological testing technician shall be seventy-five dollars ($75).

(l) The annual renewal fee for a psychological testing technician is seventy-five dollars ($75).

(m) The fee to add or change a supervisor for a psychological testing technician is twenty-five dollars ($25).

Notwithstanding any other provision of law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.

SEC. 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEMORANDUM

DATE	May 19, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(1) – AB 1795 (Fong) Open meetings: remote participation

Background:
This bill would require state bodies, subject to existing exceptions, to provide all persons the ability to participate both in-person and remotely, as defined, in any meeting and to address the body remotely.

Location: Assembly - Dead

Status: 4/29/22 – Failed Deadline

Action Requested:
The Board agreed to watch AB 1795 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 1795 (Fong) Bill Text

AB-1795 Open meetings: remote participation

SECTION 1.
Section 11123 of the Government Code is amended to read:

11123.
(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state ~~body~~ *body, including by both in-person and remote participation,* except as otherwise provided in this article. *For purposes of this subdivision, "remote participation" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting via electronic communication.*

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

SEC. 2.
Section 11125.7 of the Government Code is amended to read:

11125.7.
(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state ~~body~~ *body, including by both in-person and remote participation,* on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public. *For purposes of this subdivision, "remote participation" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting via electronic communication.*

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator or other translating technology to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to any of the following:

(1) Closed sessions held pursuant to Section 11126.

(2) Decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(3) Hearings conducted by the California Victim Compensation Board pursuant to ~~Sections 13963 and 13963.1.~~ *Section 13959.*

(4) Agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(2) – AB 1860 (Ward) Substance abuse treatment: certification.

Background:
This bill would exempt graduate student interns participating in supervised internships affiliated with graduate university programs in psychology, social work, marriage and family therapy, or counseling, and who are completing supervised practicum hours within alcoholism or drug abuse recovery and treatment programs from the certification requirement.

Location: Senate Desk

Status: 5/23/22 Read third time. Passed. Ordered to the Senate.

Action Requested:
The Board agreed to watch AB 1860 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 1860 (Ward) Bill Text

AB-1860 Substance abuse treatment: certification

SECTION 1.
Section 11833 of the Health and Safety Code is amended to read:

11833.
(a) The department shall have the sole authority in state government to determine the qualifications, including the appropriate skills, education, training, and experience of personnel working within alcoholism or drug abuse recovery and treatment programs licensed, certified, or funded under this part.

(b) (1) Except for licensed professionals, as defined by the department, *and graduate students affiliated with university programs in psychology, social work, marriage and family therapy, or counseling, who are completing their supervised practicum hours to meet postgraduate requirements,* the department shall require that an individual providing counseling services working within a program described in subdivision (a) be registered with or certified by a certifying organization approved by the department to register and certify counselors.

(2) A program providing practicum for graduate students exempted from registration in paragraph (1) shall notify the department if a graduate student is removed from the practicum as a result of an ethical or professional conduct violation, as determined by either the university or the program.

(3) The department shall report a graduate student identified in paragraph (2) to all department-approved certifying organizations in a manner to be determined by the department.

~~(2)~~ *(4)* The department shall not approve a certifying organization that does not, prior to registering or certifying an individual, contact other department-approved certifying organizations to determine whether the individual has ever had ~~his or her~~ *their* registration or certification ~~revoked.~~ *revoked or has been removed from a postgraduate practicum for an ethical or professional violation.*

(c) If a counselor's registration or certification has been previously ~~revoked, the~~ *revoked or the individual has been removed from a postgraduate practicum for an ethical or professional conduct violation, the* certifying organization shall deny the request for registration and shall send the counselor a written notice of denial. The notice shall specify the counselor's right to appeal the denial in accordance with applicable statutes and regulations.

(d) The department shall have the authority to conduct periodic reviews of certifying organizations to determine compliance with all applicable laws and regulations, including subdivision (c), and to take actions for noncompliance, including revocation of the department's approval.

(e) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, without taking any further regulatory action, shall implement, interpret, or make specific this section by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions until the time that regulations are adopted.

(2) The department shall adopt regulations by December 31, ~~2017,~~ *2023,* in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item 7(c)(3) – AB 1921 (Jones-Sawyer) Correctional Officers

Background:
This bill would allow a correctional officer employed by the Department of Corrections and Rehabilitation to receive a confidential mental health evaluation every calendar year to determine whether the individual has an emotional or mental condition that might adversely affect their exercise of the duties and powers of a correctional officer. The bill would specify the training and experience required for those conducting the evaluations. If a mental health evaluator determines that the individual has a condition that might adversely affect their exercise of the duties and powers of a correctional officer, the bill would require the evaluator to notify the correctional officer of that determination and to provide mental health resources, as specified. The bill would require the correctional officer to be allowed to receive treatment from a mental health professional of their choosing, and would require the costs of the mental health evaluation and treatment to be paid for by the department. As an incentive to participate in the mental health evaluation and treatment, the bill would allow for monetary bonuses, as specified. The bill would prohibit the evaluation from being shared with the Department of Human Resources without the affirmative and informed written consent of the correctional officer. The bill would prohibit the evaluation from being shared with the Department of Corrections and Rehabilitation, or an individual or entity with authority over the department, as specified, and would prohibit the employer from taking action, as specified, against a correctional officer for being evaluated or for accessing mental health or other resources as a result of that evaluation. The bill would become operative only upon an agreement between an employer and a recognized employee organization or bargaining unit pursuant to specified provisions.

Location: Assembly Appropriations Committee

Status: 5/20/22 Failed Deadline pursuant to Rule 61(b)(8).

Action Requested:
The Board agreed to watch AB 1921 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 1921 (Jones-Sawyer) Bill Text

AB-1921 Correctional officers

SECTION 1.
Section 13601.5 is added to the Penal Code, to read:

13601.5.
(a) The Legislature finds and declares all of the following:

(1) The emotional and mental well-being of correctional officers is critical to maintaining a safe environment for staff and inmates in the facilities of the Department of Corrections and Rehabilitation.

(2) Correctional officers are exposed to violence at rates roughly comparable to military veterans.

(3) Correctional officers have a high incidence of serious stress-related illnesses compared to average Americans.

(4) Unidentified and untreated mental health issues have serious negative impacts on correctional officers and their families and the dynamics of a correction environment, and affect their ability to carry out their duties in a safe and appropriate manner.

(5) Correctional officers' mental health needs are often overlooked until a response is necessitated by negative behavior or a significant event.

(6) Correctional officers are currently required to have a mental health evaluation prior to employment with the Department of Corrections and Rehabilitation.

(7) Routine engagement and evaluation can improve early detection or even prevent serious mental health issues.

(b) Notwithstanding any other law, a correctional officer for the Department of Corrections and Rehabilitation, as defined in subdivision (b) of Section 830.5, shall be entitled to receive a mental health evaluation once every calendar year. An evaluation pursuant to paragraph (2) of subdivision (a) of Section 13601 within the calendar year satisfies this subdivision. Yearly mental health evaluations conducted pursuant to this subdivision shall be separated by at least six months.

(1) Mental health evaluations shall be conducted through the Department of Human Resources by either of the following:

(A) A physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California who has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and

mental disorders, including the equivalent of three full-time years accrued after receipt of their doctorate degree.

(2) The mental health evaluation shall include a determination of whether the individual has an emotional or mental health condition that might adversely affect their exercise of the duties and powers of a correctional officer employed by the Department of Corrections and Rehabilitation. The evaluator shall share this information with the correctional officer.

(3) The mental health evaluation shall be confidential between the evaluator and the correctional officer and shall only be shared with the Department of Human Resources at the sole discretion, and with the affirmative and informed written consent, of the correctional officer. The evaluation shall not be shared with any individual or entity with authority over the Department of Corrections and Rehabilitation pursuant to a lawfully declared receivership, an appointee, executive, manager, or employee that has supervisorial responsibilities, or any other employee employed by or having jurisdiction over the Department of Corrections and Rehabilitation. The evaluation shall not be shared by any appointee, executive, manager, or other employee who has access to, or may access, personnel records at the Department of Human Resources with the Department of Corrections and Rehabilitation.

(4) (A) The mental health evaluator shall provide the individual with information on mental health treatment or other mental health resources. The mental health evaluator shall provide a list of mental health professionals, including, but not limited to, psychiatrists, psychologists, licensed clinical social workers, marriage family therapists, and other qualified therapists, with specific experience working with mental health issues experienced by first responders, law enforcement, or military personnel.

(B) A participating correctional officer shall receive mental health treatment from a qualified, licensed mental health professional of their choosing. The correctional officer may receive treatment from a mental health professional who is not on the list provided by the mental health evaluator.

(C) Any and all costs for and related to the mental health evaluation, treatment, and other resources shall be paid for by the department. The department shall not pass any costs for or related to the mental health evaluation, treatment, and other resources on to the correctional officer directly or indirectly, including, but not limited to, increased insurance premiums paid by the correctional officer.

(c) (1) Participation in mental health treatment or accessing mental health resources as a result of that evaluation is voluntary. A correctional officer shall not be disciplined, discharged, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against for being evaluated pursuant to subdivision (b), for participating in mental health treatment, or for accessing other mental health resources as a result of that evaluation.

(2) Correctional officers participating in the mental health evaluation or receiving mental health treatment shall receive a bonus of ____ dollars ($____) for each evaluation and subsequent treatment with a mental health professional received pursuant to

subdivision (b). A participating correctional officer shall not be entitled to a bonus for more than one mental health treatment session per quarter. The bonus shall be paid on a quarterly basis.

(d) The provisions of this section, in whole or in part, shall not become operative unless an agreement has been reached between the employer and a recognized employee organization or bargaining unit pursuant to Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code.

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MEMORANDUM

DATE	May 18, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(b)(4) – AB 1988 (Bauer-Kahan) Warren-911-Emergency Assistance Act and Miles Hall-988-Mental Health and Suicide Prevention Lifeline

Background:

Existing law, the Warren-911-Emergency Assistance Act, requires every local public agency, as defined, to have an emergency communication system and requires the digits "911" to be the primary emergency telephone number within the system.

Existing federal law, the National Suicide Hotline Designation Act of 2020, designates the 3-digit telephone number "988" as the universal number within the United States for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline maintained by the Assistant Secretary for Mental Health and Substance Abuse and the Veterans Crisis Line maintained by the Secretary of Veterans Affairs.

This bill would change the name of the Warren-911-Emergency Assistance Act to the Warren-911-Emergency Assistance Act and Miles Hall-988-Mental Health and Suicide Prevention Lifeline.

Location: Assembly Inactive File

Status: 4/28/22 – Ordered to the Assembly Inactive File at the request of Assemblymember Bauer-Kahan

Action Requested:

The Board agreed to watch AB 1988 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 1988 (Bauer-Kahan) Bill Text

AB 1988 Warren-911-Emergency Assistance Act and Miles Hall-988-Mental Health and Suicide Prevention Lifeline.

SECTION 1.
Section 53100 of the Government Code is amended to read:

53100.
(a) This article shall be known and may be cited as the Warren-911-Emergency Assistance ~~Act.~~ *Act and Miles Hall-988-Mental Health and Suicide Prevention Lifeline.*

(b) The Legislature hereby finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. There currently exist thousands of different emergency phone numbers throughout the state, and present telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries. Provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public service efforts by making it less difficult to quickly notify public safety personnel. Such a simplified means of procuring emergency services will result in the saving of life, a reduction in the destruction of property, quicker apprehension of criminals, and ultimately the saving of money. The Legislature further finds and declares that the establishment of a uniform, statewide emergency number is a matter of statewide concern and interest to all inhabitants and citizens of this state. It is the purpose of this act to establish the number “911” as the primary emergency telephone number for use in this state and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number “911” seeking police, fire, medical, rescue, and other emergency services.

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MEMORANDUM

DATE	May 19, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(b)(5) – AB 2080 (Wood) Health Care Consolidation and Contracting Fairness Act of 2022

Background:
This bill, the Health Care Consolidation and Contracting Fairness Act of 2022, would prohibit a contract issued, amended, or renewed on or after January 1, 2023, between a health care service plan or health insurer and a health care provider or health facility from containing terms that, among other things, restrict the plan or insurer from steering an enrollee or insured to another provider or facility or require the plan or insurer to contract with other affiliated providers or facilities. The bill would authorize the appropriate regulating department to refer a plan's or insurer's contract to the Attorney General, and would authorize the Attorney General or state entity charged with reviewing health care market competition to review a health care practitioner's entrance into a contract that contains specified terms. Because a willful violation of these provisions by a health care service plan would be a crime, the bill would impose a state-mandated local program.

Location: Assembly Appropriations

Status: 2/24/2022 Referred to Committees on Health and Judiciary

Action Requested:
The Board agreed to watch AB 2080 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 2080 (Wood) Bill Text

AB-2080 Health Care Consolidation and Contracting Fairness Act of 2022

SECTION 1.

This act shall be known and may be cited as the Health Care Consolidation and Contracting Fairness Act of 2022.

SEC. 2.

Section 685 is added to the Business and Professions Code, to read:

685.

(a) Notwithstanding any other law, a health care practitioner licensed under this division shall not enter into, amend, enforce, or renew a contractual provision on or after January 1, 2023, with a health care service plan or health insurer that directly or indirectly does or implements any of the following:

(1) Restricts the health care service plan or health insurer from doing or implementing either of the following:

(A) Directing or steering enrollees or insureds to other health care practitioners.

(B) Offering incentives to encourage enrollees or insureds to utilize or avoid health care practitioners.

(2) Requires the health care service plan or health insurer to enter into an additional contract with any or all affiliates or individual facilities of any health care practitioner as a condition of entering into a contract.

(3) Requires the health care service plan or health insurer to agree to payment rates or terms for an individual facility or affiliate of any health care practitioner as a condition of entering into a contract.

(4) Requires the health care service plan or health insurer to agree to payment rates or other terms for an affiliate or individual facility that is not party to the contract.

(5) Restricts other health care service plans or health insurers that are not party to the contract from paying a lower rate for items or services than the rate the contracting plan pays for those items or services.

(6) Prevents a health care service plan or health insurer, directly or indirectly, from providing provider-specific cost or quality of care information, through a consumer engagement tool or any other means, to referring providers, the plan or insurer sponsor, enrollees, insureds, or eligible enrollees or insureds of the plan or insurer.

(b) A health care practitioner’s entrance into a contract that does or implements any of the conduct described in subdivision (a) may be reviewed by the Attorney General and any other state entity charged with reviewing health care market competition for compliance with this section.

(c) Notwithstanding any other law, the Attorney General and any other state entity charged with reviewing health care market competition under this section shall be entitled to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for enforcement of this section and shall be entitled to recover attorney’s fees and costs incurred in remedying each violation.

(d) The Attorney General and any other state agency charged with reviewing health care market competition under this section may adopt regulations to implement this section.

(e) The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

SEC. 3.

Section 5931 is added to the Corporations Code, to read:

5931.

(a) (1) A medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager, except for a nonprofit corporation subject to Sections 5914 and 5920, shall provide written notice to, and obtain the written consent of, the Attorney General before entering into an agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, encumber, convey, or otherwise dispose of a material amount of its assets.

(B) Transfer control, responsibility, or governance of a material amount of its assets or operations.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the ~~nonprofit~~ corporation shall be deemed a transfer for purposes of this ~~article.~~ *section.* The substitution of one or more members of the governing body, or an arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this ~~article.~~ *section.*

(3) This section applies to a material change with a value of five million dollars ($5,000,000) or more.

(b) (1) Subdivision (a) does not apply to a nonphysician provider. For purposes of this section, “nonphysician provider” means an individual or group of individuals licensed under Division 2 (commencing with Section 500) of the Business and Professions Code who does not provide health-related physician, surgery, or laboratory services to consumers.

(2) Subdivision (a) does not apply to an ambulatory surgical center that is not affiliated with or owned by a general acute care facility, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, and is any of the following:

(A) A surgical clinic licensed by the State Department of Public Health.

(B) An ambulatory surgical center certified by the federal Centers for Medicare and Medicaid Services to participate in the Medicare Program.

(C) An outpatient setting that is accredited by an accreditation agency approved by the Medical Board of California.

(c) The notice to the Attorney General pursuant to subdivision (a) shall be provided at least 90 days before the changes, and shall include and contain the information the Attorney General deems is required. The notice, including any other information that is provided to the Attorney General pursuant to this section and that is in the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the

Attorney General. The notice shall include a list of the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services. The Attorney General may require the medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager to provide certain components of the notice in any of these languages.

(d) The Attorney General shall have discretion to consent to, give conditional consent to, or not consent to an agreement or transaction described in subdivision (a). In making the determination, the Attorney General may consider any factors that the Attorney General deems relevant, including all of the following:

(1) Whether or not the proposed material change may have a significant impact on market competition or costs for payers, purchasers, or consumers.

(2) Whether or not the proposed material change may have a significant impact on the quality of care, including the ability to offer culturally competent and appropriate care.

(3) Whether or not the proposed material change may have a significant impact on the access to or availability of health care for payers, purchasers, or consumers.

(4) Whether or not the proposed material change is in the public interest.

(5) Whether or not the proposed material change is likely to maintain access to care in a rural community. If the Attorney General finds that access to care in a rural community will become more limited with the proposed material change, the Attorney General may approve the proposed material change, and may place conditions on the proposed material change.

(e) Within 90 days of the receipt of the written notice required by subdivision (a), the Attorney General shall notify the medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The Attorney General may extend this period for one additional 45-day period if any of the following conditions apply:

(1) The extension is necessary to obtain additional information.

(2) The proposed agreement or transaction is substantially modified after the original notice was provided to the Attorney General.

(3) The proposed agreement or transaction involves a multifacility health system serving multiple communities, rather than a single facility or entity.

(f) (1) If the Attorney General does not approve an agreement or transaction, the medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager may, within 30 calendar days of notification pursuant to subdivision (e), request an adjudicative proceeding. The adjudicative proceeding shall be conducted pursuant to the administrative adjudication provisions of Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Any alternative procedure specified by the Department of Justice in accordance with Section 11400.20 of the Government Code shall conform to the purpose of the Government Code provision it replaces insofar as it is possible to do so consistent with the specific procedural requirement applicable to the type of hearing.

~~(f)~~
(g) This section applies to a foreign corporation that operates or controls a medical group, hospital or hospital system, health care service plan, health insurer, or pharmacy benefit manager, if that entity provides similar health care or coverage to a domestic corporation, regardless of whether it is currently operating or has a suspended license.

~~(g)~~
(h) The Attorney General may adopt regulations to implement this section.

~~(h)~~
(i) The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

SEC. 4.
Section 5932 is added to the Corporations Code, to read:

5932.
(a) Before issuing a written decision pursuant to Section 5931, the Attorney General shall conduct one or more public meetings on a major transaction. The Attorney General may also conduct one or more public meetings on other transactions.

(b) If the transaction involves a medical group or a hospital or hospital system, one of the public meetings shall be in the county in which the medical group or hospital is located, to hear comments from interested parties.

(c) At least 14 days before conducting the public meeting, the Attorney General shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the boards of supervisors of the county or counties in which the medical group or the hospital or hospital system is located. This notice shall be provided in English and in the primary languages spoken at the facility, if any, and the threshold languages for Medi-Cal beneficiaries, as determined by the State Department of Health Care Services.

(d) If a substantive change in the proposed agreement or transaction is submitted to the Attorney General after the initial public meeting, the Attorney General may conduct an additional public meeting to hear comments from interested parties with respect to that change.

(e) (1) With respect to a health care service plan, health insurer, or pharmacy benefit manager, “major transaction” has the same meaning as in Section 1399.65 of the Health and Safety Code.

(2) With respect to a hospital or hospital system, “major transaction” means a transaction that would have been subject to Section 5914 if it involved a nonprofit corporation.

(3) With respect to a medical group, the Attorney General shall define “major transaction” by regulation.

(f) The Attorney General may adopt regulations to implement this section.

SEC. 5.
Section 5933 is added to the Corporations Code, to read:

5933.
(a) (1) Within the time periods designated in Section 5931 and relating to the factors specified in Section 5931, the Attorney General may do both of the following:

(A) Contract with, consult, and receive advice from a state agency on the terms and conditions that the Attorney General deems appropriate.

(B) In the Attorney General's sole discretion, contract with experts or consultants to assist in reviewing the proposed material change in control.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. A contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Upon request, the Attorney General shall be paid promptly by the entities seeking consent for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from the entities seeking consent for all actual, reasonable, direct costs incurred in reviewing, evaluating, and making the determination referred to in this section, including administrative costs. The entities seeking consent shall promptly pay the Attorney General, upon request, for all of those costs.

(b) (1) To monitor effectively ongoing compliance with the terms and conditions of a material change of control subject to Section 5931, the Attorney General may, in their sole discretion, contract with experts and consultants to assist in this regard.

(2) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. A contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The entities seeking consent shall pay the Attorney General promptly for all contract costs.

(3) The Attorney General shall be entitled to reimbursement from either the selling or the acquiring entity, depending upon which one the burden of compliance falls, for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including contract and administrative costs. The Attorney General may bill either the selling or the acquiring entity and the entity billed by the Attorney General shall promptly pay for all of those costs.

(c) The Attorney General may adopt regulations to implement this section.

SEC. 6.
Section 1255.4 is added to the Health and Safety Code, to read:

1255.4.
(a) Notwithstanding any other law, a health facility shall not enter into, amend, enforce, or renew a contractual provision on or after January 1, 2023, with a health care service plan or health insurer that directly or indirectly does or implements any of the following:

(1) Restricts the health care service plan or health insurer from doing or implementing either of the following:

(A) Directing or steering enrollees or insureds to other health facilities.

(B) Offering incentives to encourage enrollees or insureds to utilize or avoid health facilities.

(2) Requires the health care service plan or health insurer to enter into an additional contract with any or all affiliates of the health facility, or individual facilities, as a condition of entering into a contract with a health facility.

(3) Requires the health care service plan or health insurer to agree to payment rates or terms for an individual facility or affiliate of the health facility as a condition of entering into a contract with a health facility, other individual facility, or affiliate.

(4) Requires the health care service plan or health insurer to agree to payment rates or other terms for an affiliate or individual facility that is not party to the contract.

(5) Restricts other health care service plans or health insurers that are not party to the contract from paying a lower rate for items or services than the rate the contracting plan or insurer pays for those items or services.

(6) Prevents a health care service plan or health insurer, directly or indirectly, from providing provider-specific cost or quality of care information, through a consumer engagement tool or any other means, to referring providers, the plan or insurer sponsor, enrollees, insureds, or eligible enrollees or insureds of the plan or insurer.

(b) The department may refer contracts subject to this section to the Attorney General or any other state entity charged with reviewing health care market competition to review the contract for compliance with this section. The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

SEC. 7.

Section 1371.26 is added to the Health and Safety Code, to read:

1371.26.

(a) A contract issued, amended, or renewed on or after January 1, 2023, between a health care service plan offering coverage in the group market or individual market and a health care provider, network or association of health care providers, or other service provider offering access to a network of service providers shall not contain a contract term that directly or indirectly does or implements any of the following:

(1) Restricts the health care service plan from doing or implementing either of the following:

(A) Directing or steering enrollees to other health care providers.

(B) Offering incentives to encourage enrollees to utilize or avoid specific health care providers.

(2) Requires the health care service plan to enter into an additional contract with any or all affiliates or individual facilities of any provider as a condition of entering into a contract.

(3) Requires the health care service plan to agree to payment rates or terms for an individual facility or affiliate of any provider as a condition of entering into a contract with another provider, other individual facility, or affiliate.

(4) Requires the health care service plan to agree to payment rates or other terms for an affiliate or individual facility that is not party to the contract.

(5) Restricts other health care service plans or health insurers that are not party to the contract from paying a lower rate for items or services than the rate the contracting plan pays for those items or services.

(6) Prevents a health care service plan, directly or indirectly, from providing provider-specific cost or quality of care information, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, enrollees, or eligible enrollees of the plan.

(b) The director may refer contracts subject to this section to the Attorney General or any other state entity charged with reviewing health care market competition to review the contract for compliance with this section. The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

SEC. 8.

The heading of Article 10.2 (commencing with Section 1399.65) of Chapter 2.2 of Division 2 of the Health and Safety Code is amended to read:

Article 10.2. Mergers and Acquisitions of and by Health Care Service Plans

SEC. 9.

Section 1399.65 of the Health and Safety Code is amended to read:

1399.65.

(a) (1) A health care service plan that intends to merge or consolidate with, or enter into an agreement resulting in its purchase, acquisition, or control by, any entity, including another health care service plan or a health insurer licensed under the Insurance Code, shall give notice to, and secure prior approval from, the director. A health care service plan that intends to acquire or obtain control of an entity through a change of governance or control of a material amount of assets of that entity shall give notice to, and secure prior approval from, the director.

(2) The transactions or agreements described in paragraph (1) may not be completed until the director approves the transaction or agreement.

(3) A health care service plan described in paragraph (1) shall meet all of the requirements of this chapter. The health care service plan shall file all the information necessary for the director to make the determination to approve, conditionally approve, or disapprove the transaction or agreement described in paragraph (1), including, but not limited to, a complete description of the proposed transaction or agreement, any modified exhibits for plan licensure pursuant to Section 1351, any approvals by federal or other state agencies required for the transaction or agreement, and any supporting documentation required by the director.

(4) The director may conditionally approve the transaction or agreement, contingent upon the health care service plan’s agreement to fulfill one or more conditions to benefit subscribers and enrollees of the health care service plan, provide for a stable health care delivery system, control costs to subscribers and enrollees, and impose other conditions specific to the transaction or agreement in furtherance of this chapter. The director shall engage stakeholders in determining the measures for improvement. For a major transaction or agreement, the director shall obtain an independent analysis of the impact of the transaction or agreement on subscribers and enrollees, the stability of the health care delivery system, and other relevant provisions of this chapter. For

any other transaction or agreement, the director may obtain an independent analysis consistent with this paragraph.

(5) If an entity involved in the transaction or agreement is a nonprofit corporation described in Section 5046 of the Corporations Code, the health care service plan shall file all the information required by Article 11 (commencing with Section 1399.70).

(b) (1) In addition to any grounds for disapproval as a result of information provided by a health care service plan pursuant to paragraph (3) of subdivision (a), the director may disapprove the transaction or agreement if the director finds the transaction or agreement would substantially lessen competition in health care service plan products or create a monopoly in this state, including, but not limited to, health coverage products for a specific line of business.

(2) In addition to any grounds for disapproval as a result of information provided by a health care service plan pursuant to paragraph (3) of subdivision (a) or paragraph (1) of this subdivision, the director may disapprove the transaction or agreement if the director finds the transaction or agreement would substantially lessen competition in the health system or among a particular category of health care providers. In so doing, the director shall provide to the Attorney General information related to competition. The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

(3) In making a finding pursuant to paragraph (1) or (2), the director may obtain an opinion from a consultant or consultants with the expertise to assess the competitive impact of the transaction or agreement.

(c) Prior to approving, conditionally approving, or disapproving a major transaction or agreement, the department shall hold a public meeting on the proposed transaction or agreement. For any other transaction or agreement, the department may hold a public meeting on the proposed transaction or agreement. The public meeting shall be conducted pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). The meeting shall permit the parties to the proposed transaction and members of the public to provide written and verbal comments regarding the proposed transaction. If a substantive change in the proposed transaction or agreement is submitted to the director after the initial public meeting, the director may conduct an additional public meeting to hear comments from interested parties with respect to that change. The director shall consider the testimony and comments received at the public meeting in making the determination to approve, conditionally approve, or disapprove the transaction or agreement.

(d) If the director determines a material amount of assets of a health care service plan is subject to purchase, acquisition, or control, the director shall prepare a statement describing the proposed transaction or agreement subject to subdivision (a) and make it available to the public. The statement shall be made available before the public meeting.

(e) This section does not limit the authority of the director to enforce any other provision of this chapter.

(f) For purposes of this section:

(1) “Acquiring” an entity includes the sale, transfer, lease, exchange, option, conveyance, or other disposition of an entity’s assets by a health care service plan if a material amount of the assets of the entity are involved in the agreement or transaction.

(2) “Entity” means a health care service plan, an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, any similar entity, or any combination thereof acting in concert.

(3) (A) “Major transaction or agreement” means a transaction or agreement that meets any of the following criteria:

(i) Affects a significant number of enrollees.

(ii) Involves a material amount of assets.

(iii) Adversely affects either the subscribers or enrollees or the stability of the health care delivery system because of the entity’s market position, including, but not limited to, the entity’s market exit from a market segment or the entity’s dominance of a market segment.

(B) The director shall, upon request, make available to the public the director’s determination of whether a transaction or agreement meets the criteria set forth in this paragraph.

(4) “Obtaining control” of an entity occurs if the entity transfers control, responsibility, or governance of a material amount of its assets or operations to a health care service plan.

(5) “Transfer” includes the substitution of one or more new corporate members that would transfer the control of, responsibility for, or governance of the entity. “Transfer” also includes the substitution of one or more members of the entity’s governing body, or an arrangement, written or oral, that would transfer voting control of the members of the governing body.

SEC. 10.

Section 10123.149 is added to the Insurance Code, to read:

10123.149.

(a) A contract issued, amended, or renewed on or after January 1, ~~2022,~~ *2023,* between a health insurer offering coverage in the group market or individual market and a health care provider, network or association of health care providers, or other service provider offering access to a network of service providers shall not contain a contract term that directly or indirectly does or implements any of the following:

(1) Restricts the health insurer from doing or implementing either of the following:

(A) Directing or steering insureds to other health care providers.

(B) Offering incentives to encourage insureds to utilize or avoid health care providers.

(2) Requires the health insurer to enter into an additional contract with any or all affiliates or individual facilities of a provider as a condition of entering into a contract.

(3) Requires the health insurer to agree to payment rates or terms for an individual facility or affiliate of any providers as a condition of entering into a contract with another provider, other individual facility, or affiliate.

(4) Requires the health insurer to agree to payment rates or other terms for an affiliate or individual facility that is not party to the contract.

(5) Restricts other health insurers or health care service plans that are not party to the contract from paying a lower rate for items or services than the rate the contracting plan pays for those items or services.

(6) Prevents a health insurer, directly or indirectly, from providing provider-specific cost or quality of care information, through a consumer engagement tool or any other means, to referring providers, the insurer sponsor, insureds, or eligible insureds of the insurer.

(b) The commissioner may refer contracts subject to this section to the Attorney General or any other state entity charged with reviewing health care market competition to review the contract for compliance with this section. The authority of the Attorney General to maintain competitive markets and prosecute state and federal antitrust and unfair competition violations shall not be narrowed, abrogated, or otherwise altered by this section.

SEC. 11.

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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MEMORANDUM

DATE	May 18, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(6) – AB 2104 (Flora) Professions and vocations

Background:
This bill would require the delinquency, penalty, or late fee for any licensee within the department to be 50% of the renewal fee for that license, but not to exceed $150.

Location: Assembly Dead

Status: 4/29/22 – Failed to meet deadline

Action Requested:
The Board agreed to watch AB 2104 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 2104 (Flora) Bill Text

AB-2104 Professions and vocations

SECTION 1.
Section 163 of the Business and Professions Code is amended to read:

163.
Except as otherwise expressly provided by law, the department and each board in the department ~~shall~~ *may* charge a fee ~~of~~ *not to exceed* two dollars ($2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, ~~document~~ *document,* or paper.

SEC. 2.
Section 163.5 of the Business and Professions Code is amended to read:

163.5.
Except as otherwise provided by law, the delinquency, penalty, or late fee for any licensee within the Department of Consumer Affairs shall be 50 percent of the renewal fee for ~~such~~ *that* license in effect on the date of the renewal of the license, but ~~not less than twenty-five dollars ($25) nor more than~~ *shall not exceed* one hundred fifty dollars ($150).

A delinquency, penalty, or late fee shall not be assessed until 30 days have elapsed from the date that the licensing agency mailed a notice of renewal to the licensee at the licensee's last known address of record. The notice shall specify the date for timely renewal, and that failure to renew in a timely fashion shall result in the assessment of a delinquency, penalty, or late fee.

~~In the event~~ *If* a reinstatement or like fee is charged for the reinstatement of a license, the reinstatement fee shall be 150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars ($25) in excess of the renewal fee, except that in the event that such a fee is fixed by statute at less than 150 percent of the renewal fee and less than the renewal fee plus twenty-five dollars ($25), the fee so fixed shall be charged.

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MEMORANDUM

DATE	May 18, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(7) – AB 2229 (Luz Rivas) Peace officers: minimum standards: bias evaluation

Background:

Existing law requires peace officers in this state to meet specified minimum standards, including, among other requirements, that peace officers be evaluated by a physician and surgeon or psychologist and found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

This bill would require that evaluation to include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

Under existing law, the minimum education requirement for peace officers is high school graduation from a public school or other accredited high school, passing an equivalency test or high school proficiency examination, or attaining a 2-year, 4-year, or advanced degree from an accredited institution. Existing law requires accreditation to be from a state or local government educational agency, a regional accrediting association, an accrediting association recognized by the United States Department of Education, or an organization holding full membership in specified organizations, including AdvancED.

This bill would revise the accreditation standards to include an organization holding full membership in Cognia.

Location: Senate Public Safety

Status: 5/31/22 – Senate Public Safety

Action Requested:
The Board agreed to watch AB 2229 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 2229 (Luz Rivas) Bill Text

AB-2229 Peace officers: minimum standards: bias evaluation

SECTION 1.
Section 1031 of the Government Code is amended to read:

1031.
Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or university. The high school shall be either a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, an accrediting association holding full membership in the National Council for Private School Accreditation (NCPSA), an organization holding full membership in ~~AdvancED,~~ *AdvancED or Cognia,* an organization holding full membership in the Council for American Private Education (CAPE), or an accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations (NFNSSAA).

(f) Be found to be free from any physical, emotional, or mental ~~condition~~ *condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation,* that might adversely affect the exercise of the powers of a peace officer.

(1) Physical condition shall be evaluated by a licensed physician and surgeon.

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate.

The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

(g) This section shall not be construed to preclude the adoption of additional or higher standards, including age.

SEC. 2.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide immediate clarity of the minimum standards applicable to peace officers and to protect the health and safety of the members of the public with whom they interact as soon as possible, it is necessary for this act to take effect immediately.

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MEMORANDUM

DATE	May 18, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(8) – AB 2274 (Blanca Rubio) Mandated reporters: statute of limitations

Background:

Existing law, the Child Abuse and Neglect Reporting Act, makes certain persons, including teachers and social workers, mandated reporters. Under existing law, mandated reporters are required to report whenever the mandated reporter, in their professional capacity or within the scope of their employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor. Existing law generally requires prosecution of a misdemeanor to commence within one year after commission of the offense. Under existing law, a case involving the failure to report an incident known or reasonably suspected by the mandated reporter to be sexual assault may be filed at any time within 5 years from the date of occurrence of the offense.

This bill would allow a case involving the failure to report an incident known or reasonably suspected by the mandated reporter to be child abuse or severe neglect, as defined, to be filed within one year of the discovery of the offense, but in no case later than 4 years after the commission of the offense.

Location: Senate Rules

Status: 5/10/22 – Senate Rules.

Action Requested:
The Board agreed to watch AB 2274 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: AB 2274 (Blanca Rubio) Bill Text

AB-2274 Mandated reporters: statute of limitations

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

SECTION 1.
Section 801.6 of the Penal Code is amended to read:

801.6.
Notwithstanding any other limitation of time described in this chapter, prosecution for any offense proscribed by Section 368, except for a violation of any provision of law proscribing theft or embezzlement, may be filed at any time within five years from the date of occurrence of such offense.

SEC. 2.
Section 801.8 is added to the Penal Code, to read:

801.8.
(a) Notwithstanding any other limitation of time described in this chapter, prosecution for the failure of a mandated reporter to report an incident under Section 11166 known or reasonably suspected by the mandated reporter to be sexual assault as defined in Section 11165.1, may be filed at any time within five years from the date of occurrence of such offense.

(b) Notwithstanding any other limitation of time described in this chapter, prosecution for the failure of a mandated reporter to report an incident under Section 11166 known or reasonably suspected by the mandated reporter to be child abuse or *severe* neglect that is not described in subdivision (a), may be filed within one year of the discovery of the offense, but in no case later than four years after the commission of the offense.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item # 7(c)(9)– SB 1031 (Ochoa Bogh) Healing arts boards: inactive license fees

Background:

Existing law establishes healing arts boards in the Department of Consumer Affairs to ensure private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. Existing law requires each healing arts board to issue inactive licenses to holders of active licenses whose license is not punitively restricted by that board. Existing law prohibits the holder of an inactive license from engaging in any activity for which an active license is required. Existing law requires the renewal fee for an active license to apply to an inactive license, unless the board establishes a lower fee.

This bill would instead require the renewal fee for an inactive license to be 1/2 of the amount of the fee for a renewal of an active license, unless the board establishes a lower fee. The bill would make conforming and other nonsubstantive changes.

Location: Senate Appropriations

Status: 5/20/22 Failed Deadline pursuant to Rule 61(b)(8).

Action Requested:
The Board agreed to watch SB 1031 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: SB 1031 (Ochoa Bogh) Bill Text

SB-1031 Healing arts boards: inactive license fees

SECTION 1.
Section 701 of the Business and Professions Code is amended to read:

701.
(a) As used in this article, "board" refers to ~~any~~ *a* healing arts board, division, or examining committee ~~which~~ *that* licenses or certifies health professionals.

(b) Each healing arts board referred to in this division shall issue, upon application and payment of the ~~normal~~ *inactive license* renewal fee, ~~an~~ *in an amount determined by the board pursuant to Section 703, an* inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

SEC. 2.
Section 703 of the Business and Professions Code is amended to read:

703.
(a) An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder ~~thereof need not~~ *of the license or certificate is not required to* comply with any continuing education requirement for renewal of an active license or certificate.

(b) ~~The~~ *Notwithstanding any other law, the* renewal fee for a license or certificate in an ~~active status shall apply also for~~ *inactive status shall be one-half of the amount of the fee for the* renewal of a license or certificate in an ~~inactive status, unless a lower fee has been established by the issuing board.~~ *active status, unless the issuing board establishes a lower fee.*

SEC. 3.
Section 1006.5 of the Business and Professions Code is amended to read:

1006.5.
Notwithstanding any other law, the amount of regulatory fees necessary to carry out the responsibilities required by the Chiropractic Initiative Act and this chapter are fixed in the following schedule:

(a) Fee to apply for a license to practice chiropractic: three hundred seventy-one dollars ($371).

(b) Fee for initial license to practice chiropractic: one hundred eighty-six dollars ($186).

(c) Fee to renew an active ~~or inactive~~ license to practice chiropractic: three hundred thirteen dollars ($313).

(d) Fee to apply for approval as a continuing education provider: eighty-four dollars ($84).

(e) Biennial continuing education provider renewal fee: fifty-six dollars ($56).

(f) Fee to apply for approval of a continuing education course: fifty-six dollars ($56) per course.

(g) Fee to apply for a satellite office certificate: sixty-two dollars ($62).

(h) Fee to renew a satellite office certificate: thirty-one dollars ($31).

(i) Fee to apply for a license to practice chiropractic pursuant to Section 9 of the Chiropractic Initiative Act: three hundred seventy-one dollars ($371).

(j) Fee to apply for a certificate of registration of a chiropractic corporation: one hundred eighty-six dollars ($186).

(k) Fee to renew a certificate of registration of a chiropractic corporation: thirty-one dollars ($31).

(l) Fee to file a chiropractic corporation special report: thirty-one dollars ($31).

(m) Fee to apply for approval as a referral service: five hundred fifty-seven dollars ($557).

(n) Fee for an endorsed verification of licensure: one hundred twenty-four dollars ($124).

(o) Fee for replacement of a lost or destroyed license: fifty dollars ($50).

(p) Fee for replacement of a satellite office certificate: fifty dollars ($50).

(q) Fee for replacement of a certificate of registration of a chiropractic corporation: fifty dollars ($50).

(r) Fee to restore a forfeited or canceled license to practice chiropractic: double the annual renewal fee specified in subdivision (c).

(s) Fee to apply for approval to serve as a preceptor: thirty-one dollars ($31).

(t) Fee to petition for reinstatement of a revoked license: three hundred seventy-one dollars ($371).

(u) Fee to petition for early termination of probation: three hundred seventy-one dollars ($371).

(v) Fee to petition for reduction of penalty: three hundred seventy-one dollars ($371).

SEC. 4.
Section 2734 of the Business and Professions Code is amended to read:

2734.
Upon application in writing to the board and payment of ~~the biennial renewal fee,~~ *a renewal fee, in an amount determined by the board pursuant to Section 703,* a licensee may have ~~his~~ *their* license placed in an inactive status for an indefinite period of time. A licensee whose license is in an inactive status ~~may~~ *shall* not practice nursing. However,

~~such a~~ *the* licensee ~~does~~ *is* not ~~have~~ *required* to comply with the continuing education standards of Section 2811.5.

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MEMORANDUM

DATE	May 24, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item #7(c)(10) – SB 1223 (Becker) Criminal procedure: mental health diversion

Background:

Existing law authorizes a court to grant pretrial diversion, for a period no longer than 2 years, to a defendant suffering from a mental disorder, on an accusatory pleading alleging the commission of a misdemeanor or felony offense, in order to allow the defendant to undergo mental health treatment. Existing law conditions eligibility on, among other criteria, a court finding that the defendant suffers from a mental disorder, as specified, and that the defendant's mental disorder played a significant role in the commission of the charged offense. Existing law makes defendants ineligible for the diversion program for certain offenses, including murder, voluntary manslaughter, and rape.

This bill would change the eligibility criteria to include a diagnosis of a mental disorder instead of the court finding the defendant suffers from a mental disorder and would remove the requirement that the diagnosis be recent. The bill would define "qualified mental health expert" for these purposes. The bill would, for a defendant charged with a misdemeanor, limit the period of diversion to one year. The bill would also provide that a decision by a judge to deny diversion would not be binding on any other judge subsequently assigned to the case at a later stage. The bill would make other conforming changes.

Location: Senate Floor

Status: Senate Third Reading.

Action Requested:
The Board agreed to watch SB 1223 on April 29, 2022. Therefore, there is no action requested and this item is for informational purposes only.

Attachment A: SB 1223 (Becker) Bill Text

SECTION 1.
Section 1001.36 of the Penal Code is amended to read:

1001.36.
(a) On an accusatory pleading alleging the commission of a misdemeanor or felony offense, the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant pursuant to this section if the defendant meets all of the requirements specified in subdivisions (b), (c), and (d).

(b) Pretrial diversion pursuant to this section shall be considered if both of the following criteria are met:

(1) The defendant has been diagnosed with 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, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. Evidence of the defendant's mental disorder shall be provided by the defense and shall include a diagnosis by a qualified mental health expert. In opining that a defendant suffers from a qualifying disorder, the qualified mental health expert may rely on an examination of the defendant, the defendant's medical records, arrest reports, or any other relevant evidence.

(2) The court is satisfied that the defendant's mental disorder was a significant factor in the commission of the charged offense. ~~A defendant's mental disorder was a significant factor in the commission of the charged offense if the disorder or its symptoms were a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.~~ If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant's mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was ~~not.~~ *not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.* A court may consider 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, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.

(c) The court may grant pretrial diversion pursuant to this section if all of the following criteria are met:

(1) In the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment.

(2) The defendant consents to diversion and waives the defendant's right to a speedy trial, unless a defendant has been found to be an appropriate candidate for diversion in lieu of commitment pursuant to clause (iv) of subparagraph (B) of paragraph (1) of

subdivision (a) of Section 1370 and, as a result of the defendant's mental incompetence, cannot consent to diversion or give a knowing and intelligent waiver of the defendant's right to a speedy trial.

(3) The defendant agrees to comply with treatment as a condition of diversion.

(4) The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community. The court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's treatment plan, the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate.

(d) A defendant may not be placed into a diversion program, pursuant to this section, for the following current charged offenses:

(1) Murder or voluntary manslaughter.

(2) An offense for which a person, if convicted, would be required to register pursuant to Section 290, except for a violation of Section 314.

(3) Rape.

(4) Lewd or lascivious act on a child under 14 years of age.

(5) Assault with intent to commit rape, sodomy, or oral copulation, in violation of Section 220.

(6) Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1.

(7) Continuous sexual abuse of a child, in violation of Section 288.5.

(8) A violation of subdivision (b) or (c) of Section 11418.

(e) At any stage of the proceedings, the court may require the defendant to make a prima facie showing that the defendant will meet the minimum requirements of eligibility for diversion and that the defendant and the offense are suitable for diversion. The hearing on the prima facie showing shall be informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate.

(f) As used in this chapter, the following terms have the following meanings:

(1) "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 all of the following:

(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant.

(ii) The defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources. Before approving a proposed treatment program, the court shall consider the request of the defense, the request of the prosecution, the needs of the defendant, and the interests of the community. The treatment may be procured using private or public funds, and a referral may be made to a county mental health agency, existing collaborative courts, or assisted outpatient treatment only if that entity 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 services.

(B) The provider of the mental health treatment program in which the defendant has been placed shall provide regular reports to the court, the defense, and the prosecutor on the defendant's progress in treatment.

(C) The period during which criminal proceedings against the defendant may be diverted is limited as follows:

(i) If the defendant is charged with a felony, the period shall be no longer than two years.

(ii) If the defendant is charged with a misdemeanor, the period shall be no longer than one year.

(D) Upon request, the court shall conduct a hearing to determine whether restitution, as defined in subdivision (f) of Section 1202.4, is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of diversion. However, a defendant's inability to pay restitution due to indigence or mental disorder shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion.

(2) "Qualified mental health expert" includes, but is not limited to, a psychiatrist, psychologist, a person described in Section 5751.2 of the Welfare and Institutions Code, or a person whose knowledge, skill, experience, training, or education qualifies them as an expert.

(g) If any of the following circumstances exists, the court shall, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether the criminal proceedings should be reinstated, whether the treatment should be modified, or whether the defendant should be conserved and referred to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code:

(1) The defendant is charged with an additional misdemeanor allegedly committed during the pretrial diversion and that reflects the defendant's propensity for violence.

(2) The defendant is charged with an additional felony allegedly committed during the pretrial diversion.

(3) The defendant is engaged in criminal conduct rendering the defendant unsuitable for diversion.

(4) Based on the opinion of a qualified mental health expert whom the court may deem appropriate, either of the following circumstances exists:

(A) The defendant is performing unsatisfactorily in the assigned program.

(B) The defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code. A defendant shall only be conserved and referred to the conservatorship investigator pursuant to this finding.

(h) If the defendant has performed satisfactorily in diversion, at the end of the period of diversion, the court shall dismiss the defendant's criminal charges that were the subject of the criminal proceedings at the time of the initial diversion. A court may conclude that the defendant has performed satisfactorily if the defendant has substantially complied with the requirements of diversion, has avoided significant new violations of law unrelated to the defendant's mental health condition, and has a plan in place for long-term mental health care. If the court dismisses the charges, the clerk of the court shall file a record with the Department of Justice indicating the disposition of the case diverted pursuant to this section. Upon successful completion of diversion, if the court dismisses the charges, the arrest upon which the diversion was based shall be deemed never to have occurred, and the court shall order access to the record of the arrest restricted in accordance with Section 1001.9, except as specified in ~~subdivisions(j)~~ *subdivisions (j)* and (k). The defendant who successfully completes diversion may indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or diverted for the offense, except as specified in subdivision (j).

(i) A record pertaining to an arrest resulting in successful completion of diversion, or any record generated as a result of the defendant's application for or participation in diversion, 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.

(j) The defendant shall be advised that, regardless of the defendant's completion of diversion, both of the following apply:

(1) The arrest upon which the diversion was based may be disclosed by the Department of Justice to any peace officer application request and that, notwithstanding subdivision (i), 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.

(2) 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.

(k) 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 participation in, or completion of, diversion pursuant to this section or for use at a hearing on the defendant's eligibility for diversion under this section may not be used in any other proceeding without the defendant's consent, unless that information is relevant evidence that is admissible under the standards described in paragraph (2) of subdivision (f) of Section 28 of Article I of the California Constitution. However, when determining whether to exercise its discretion to grant diversion under this section, a court may consider previous records of participation in diversion under this section.

(l) The county agency administering the diversion, the defendant's mental health treatment providers, the public guardian or conservator, and the court shall, to the extent not prohibited by federal law, have access to the defendant's medical and psychological records, including progress reports, during the defendant's time in diversion, as needed, for the purpose of providing care and treatment and monitoring treatment for diversion or conservatorship.

(m) A decision by any judge to deny diversion pursuant to this section shall not be binding on any other judge subsequently assigned to the same case at a later stage.

SEC. 2.
Section 1370 of the Penal Code is amended to read:

1370.
(a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged or hearing on the alleged violation shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent.

(i) The court shall order that the mentally incompetent defendant be delivered by the sheriff to a State Department of State Hospitals facility, as defined in Section 4100 of the Welfare and Institutions Code, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a community-based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by

the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, or other secure treatment facility for the care and treatment of persons with a mental health disorder, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a State Department of State Hospitals facility, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) If, at any time after the court finds that the defendant is mentally incompetent and before the defendant is transported to a facility pursuant to this section, the court is provided with any information that the defendant may benefit from diversion pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, the court may make a finding that the defendant is an appropriate candidate for diversion.

(v) If a defendant is found by the court to be an appropriate candidate for diversion pursuant to clause (iv), the defendant's eligibility shall be determined pursuant to Section 1001.36. A defendant granted diversion may participate for the lesser of the period specified in paragraph (1) of subdivision (c) or the applicable period described in subparagraph (C) of paragraph (1) of subdivision (f) of Section 1001.36. If, during that period, the court determines that criminal proceedings should be reinstated pursuant to subdivision (g) of Section 1001.36, the court shall, pursuant to Section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to determine the defendant's competence to stand trial.

(vi) Upon the dismissal of charges at the conclusion of the period of diversion, pursuant to subdivision (h) of Section 1001.36, a defendant shall no longer be deemed incompetent to stand trial pursuant to this section.

(vii) The clerk of the court shall notify the Department of Justice, in writing, of a finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in the defendant's state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a State Department of State Hospitals facility or treatment facility pursuant to this subdivision unless the State Department of State Hospitals facility or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court shall serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be placed, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(G) If, at any time after the court has declared a defendant incompetent to stand trial pursuant to this section, counsel for the defendant or a jail medical or mental health staff provider provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to opine as to whether the defendant has regained competence. If, in the opinion of that expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.

(H) (i) The State Department of State Hospitals may, pursuant to Section 4335.2 of the Welfare and Institutions Code, conduct an evaluation of the defendant in county custody to determine any of the following:

(I) The defendant has regained competence.

(II) There is no substantial likelihood that the defendant will regain competence in the foreseeable future.

(III) The defendant should be referred to the county for further evaluation for potential participation in a county diversion program, if one exists, or to another outpatient treatment program.

(ii) If, in the opinion of the department's expert, the defendant has regained competence, the court shall proceed as if a certificate of restoration of competence has been returned pursuant to paragraph (1) of subdivision (a) of Section 1372, except that a presumption of competency shall not apply and a hearing shall be held to determine whether competency has been restored.

(iii) If, in the opinion of the department's expert, there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall proceed pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or be committed to the State Department of State Hospitals or to any other treatment facility. A person shall not be admitted to a State Department of State Hospitals facility or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee. The community program director or designee shall evaluate the appropriate placement for the defendant between a State Department of State Hospitals facility or the community-based residential treatment system based upon guidelines provided by the State Department of State Hospitals.

(B) The court shall hear and determine whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (a) of Section 1369, as applicable to the issue of whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:

(i) The court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the defendant will result. Probability of serious harm to the physical or mental health of the

defendant requires evidence that the defendant is presently suffering adverse effects to their physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and their condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in the defendant being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the defendant's best medical interest in light of their medical condition.

(ii) If the court finds any of the conditions described in clause (i) to be true, the court shall issue an order authorizing involuntary administration of antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist at any facility housing the defendant for purposes of this chapter. The order shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7). The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of their counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist

complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from their counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a State Department of State Hospitals facility or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the State Department of State Hospitals facility or other treatment facility, shall have the right to contact the patients' rights advocate regarding the defendant's rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws their consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be

appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for the defendant's interests at the hearing, review the panel's final determination following the hearing, advise the defendant of their right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To be given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order to administer antipsychotic medication beyond the 21-day certification period. For purposes of this subparagraph, the treating psychiatrist shall not be required to pay or deposit any fee for the filing of the petition or other document or paper related to the petition.

(iii) If the administrative law judge disagrees with the certification, medication may not be administered involuntarily until the court determines that antipsychotic medication should be administered pursuant to this section.

(iv) The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant, and shall hold a hearing, no later than 18 days from the date of the certification, to determine whether antipsychotic medication should be ordered beyond the certification period.

(v) If, as a result of the hearing, the court determines that antipsychotic medication should be administered beyond the certification period, the court shall issue an order authorizing the administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(vii) If the administrative law judge upholds the certification pursuant to clause (ii), the court may, for a period not to exceed 14 days, extend the certification and continue the hearing pursuant to stipulation between the parties or upon a finding of good cause. In determining good cause, the court may review the petition filed with the court, the administrative law judge's order, and any additional testimony needed by the court to determine if it is appropriate to continue medication beyond the 21-day certification and for a period of up to 14 days.

(viii) The district attorney, county counsel, or representative of a facility where a defendant found incompetent to stand trial is committed may petition the court for an order to administer involuntary medication pursuant to the criteria set forth in subclauses (II) and (III) of clause (i) of subparagraph (B). The order is reviewable as provided in paragraph (7).

(3) When the court orders that the defendant be committed to a State Department of State Hospitals facility or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Arrest reports prepared by the police department or other law enforcement agency.

(F) Court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(I) Medical records.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a State Department of State Hospitals facility or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the placement facility of a finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a State Department of State Hospitals facility pursuant to this subdivision, the court shall commit the defendant to the State Department of State Hospitals.

(6) (A) If the defendant is committed or transferred to the State Department of State Hospitals pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the State Department of State Hospitals facility and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to the State Department of State Hospitals or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). If either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a State Department of State Hospitals facility or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be electronically transferred or taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(7) (A) An order by the court authorizing involuntary medication of the defendant shall be valid for no more than one year. The court shall review the order at the time of the review of the initial report and the six-month progress reports pursuant to paragraph (1) of subdivision (b) to determine if the grounds for the authorization remain. In the review, the court shall consider the reports of the treating psychiatrist or psychiatrists and the defendant’s patients’ rights advocate or attorney. The court may require testimony from the treating psychiatrist and the patients’ rights advocate or attorney, if necessary. The

court may continue the order authorizing involuntary medication for up to another six months, or vacate the order, or make any other appropriate order.

(B) Within 60 days before the expiration of the one-year involuntary medication order, the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed may petition the committing court for a renewal, subject to the same conditions and requirements as in subparagraph (A). The petition shall include the basis for involuntary medication set forth in clause (i) of subparagraph (B) of paragraph (2). Notice of the petition shall be provided to the defendant, the defendant's attorney, and the district attorney. The court shall hear and determine whether the defendant continues to meet the criteria set forth in clause (i) of subparagraph (B) of paragraph (2). The hearing on a petition to renew an order for involuntary medication shall be conducted prior to the expiration of the current order.

(8) For purposes of subparagraph (D) of paragraph (2) and paragraph (7), if the treating psychiatrist determines that there is a need, based on preserving their rapport with the defendant or preventing harm, the treating psychiatrist may request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist. If the medical director of the facility designates another psychiatrist to act pursuant to this paragraph, the treating psychiatrist shall brief the acting psychiatrist of the relevant facts of the case and the acting psychiatrist shall examine the defendant prior to the hearing.

(b) (1) Within 90 days after a commitment made pursuant to subdivision (a), the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary.

If the defendant is in county custody, the county jail shall provide access to the defendant for purposes of the State Department of State Hospitals conducting an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code. Based upon this evaluation, the State Department of State Hospitals may make a written report to the court within 90 days of a commitment made pursuant to subdivision (a) concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary. If the defendant remains in county custody after the initial 90-day report, the State Department of State Hospitals may conduct an evaluation of the defendant pursuant to Section 4335.2 of the Welfare and Institutions Code and make a written report to the court concerning the defendant's progress toward recovery of mental incompetence and whether the administration of antipsychotic medication is necessary.

If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward

recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the State Department of State Hospitals facility or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the State Department of State Hospitals facility or person in charge of the facility shall report, in writing, to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence and whether the administration of antipsychotic medication remains necessary. If the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court.

(A) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The defendant shall be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c) no later than 10 days following receipt of the report. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to subparagraph (A).

(C) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification made pursuant to clause (ii) of subparagraph (B), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(2) If the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, the reports made pursuant to paragraph (1) concerning the defendant's progress toward regaining competency shall

also consider the issue of involuntary medication. Each report shall include, but not be limited to, all of the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to their physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if the defendant is not treated with antipsychotic medication.

(D) Whether the defendant has a mental disorder for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medication still exist and shall do one of the following:

(A) If the original grounds for involuntary medication still exist, the order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant shall remain in effect.

(B) If the original grounds for involuntary medication no longer exist, and there is no other basis for involuntary administration of antipsychotic medication, the order for the involuntary administration of antipsychotic medication shall be vacated.

(C) If the original grounds for involuntary medication no longer exist, and the report states that there is another basis for involuntary administration of antipsychotic medication, the court shall set a hearing within 21 days to determine whether the order for the involuntary administration of antipsychotic medication shall be vacated or whether a new order for the involuntary administration of antipsychotic medication shall be issued. The hearing shall proceed as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(4) If it is determined by the court that treatment for the defendant's mental impairment is not being conducted, the defendant shall be returned to the committing court, and, if the defendant is not in county custody, returned to the custody of the county. The court shall transmit a copy of its order to the community program director or a designee.

(5) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination. If the court determines that the defendant shall continue to be treated in the State Department of State Hospitals facility or on an outpatient basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of two years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, or the maximum term of imprisonment provided by law for a violation of probation or mandatory supervision, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court, and custody of the defendant shall be transferred without delay to the committing county and shall remain with the county until further order of the court. The court shall not order the defendant returned to the custody of the State Department of State Hospitals under the same commitment. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) (A) The medical director of the State Department of State Hospitals facility or other treatment facility to which the defendant is confined shall provide notification, in compliance with applicable privacy laws, to the committing county's sheriff that immediate transportation will be needed for the defendant pursuant to paragraph (1).

(B) If a county does not take custody of a defendant committed to the State Department of State Hospitals within 10 calendar days following notification pursuant to subparagraph (A), the county shall be charged the daily rate for a state hospital bed, as established by the State Department of State Hospitals.

(3) Whenever a defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a

designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(4) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which the criminal charges or revocation proceedings are pending.

(5) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (3) of subdivision (c), or if a conservatorship is terminated, the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.

(e) If the criminal action against the defendant is dismissed, the defendant shall be released from commitment ordered under this section, but without prejudice to the initiation of proceedings that may be appropriate under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" does not include, except for State Department of State Hospitals facilities, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) This section does not preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

SEC. 3.
Section 1370.01 of the Penal Code is amended to read:

1370.01.
(a) If the defendant is found mentally competent, the criminal process shall resume, and the trial on the offense charged or hearing on the alleged violation shall proceed.

(b) If the defendant is found mentally incompetent, the trial, judgment, or hearing on the alleged violation shall be suspended and the court may do either of the following:

(1) (A) Conduct a hearing, pursuant to Chapter 2.8A (commencing with Section 1001.35) of Title 6, and, if the court deems the defendant eligible, grant diversion pursuant to Section 1001.36 for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter.

(B) If the court opts to conduct a hearing pursuant to this paragraph, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing.

(C) If the defendant performs satisfactorily on diversion pursuant to this section, at the end of the period of diversion, the court shall dismiss the criminal charges that were the subject of the criminal proceedings at the time of the initial diversion.

(D) If the court finds the defendant ineligible for diversion based on the circumstances set forth in subdivision (b), (c), (d), or (g) of Section 1001.36, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

(i) Order modification of the treatment plan in accordance with a recommendation from the treatment provider.

(ii) Refer the defendant to assisted outpatient treatment pursuant to Section 5346 of the Welfare and Institutions Code. A referral to assisted outpatient treatment may only occur in a county where services are available pursuant to Section 5348 of the Welfare and Institutions Code, and the agency agrees to accept responsibility for treatment of the defendant. A hearing to determine eligibility for assisted outpatient treatment shall be held within 45 days after the date of the referral. If the hearing is delayed beyond 45 days, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending that hearing. If the defendant is accepted into assisted outpatient treatment, the charges shall be dismissed pursuant to Section 1385.

(iii) Refer the defendant to the county conservatorship investigator in the county of commitment for possible conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. A defendant shall only be referred to the conservatorship investigator if, based on the opinion of a qualified mental health expert, the defendant appears to be gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institution Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county of commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or the director's designee and shall notify the county mental health director or their designee of the outcome of the proceedings. Before establishing a conservatorship, the public guardian shall investigate all available alternatives to conservatorship pursuant to Section 5354 of the Welfare and Institutions Code. If a petition is not filed within 60 days of the referral, the court shall order the defendant, if confined in county jail, to be released on their own recognizance pending conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed pursuant to Section 1385.

(2) Dismiss the charges pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the county mental health director or the director's designee.

(c) If the defendant is found mentally incompetent and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed pursuant to this subdivision, the court may modify the terms and conditions of supervision to include appropriate mental health treatment.

(d) It is the intent of the Legislature that a defendant subject to the terms of this section receive mental health treatment in a treatment facility and not a jail. A term of four days will be deemed to have been served for every two days spent in actual custody against the maximum term of diversion. A defendant not in actual custody shall otherwise receive day for day credit against the term of diversion from the date the defendant is accepted into diversion. "Actual custody" has the same meaning as in Section 4019.

(e) This section shall apply only as provided in subdivision (b) of Section 1367.

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MEMORANDUM

DATE	May 25, 2022
TO	Legislative and Regulatory Affairs Committee
FROM	Jason Glasspiegel Central Services Manager
SUBJECT	Agenda Item #9 – Regulatory Update

The following is a list of the Board's remaining regulatory packages, and their status in the regulatory process:

a) Update on Title 16, California Code of Regulations (CCR) sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.10, 1391.11, 1391.12, 1392.1 – Psychological Associates

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

This package was provided to the Department of Consumer Affairs (DCA) on November 12, 2019, and is now in the Initial Departmental Review Stage. This stage involves a review by DCA's legal, budget, and executive offices, and the State's Business Consumer Services and Housing Agency (Agency). Upon approval by DCA and Agency, staff will notice this package for a 45-day comment period and subsequent hearing.

b) Update on 16 CCR sections 1381.9, 1381.10, 1392 – Retired License, Renewal of Expired License, Retired License Fees

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

This package was published in the OAL notice register with the comment period ending on November 30, 2021 and hearing on December 1, 2021. The Board adopted the package on February 18, 2022, and the package was recently approved by Agency. Since the Fee Package has been approved by the Office of Administrative Law (OAL) (effective July 1, 2022), this package was submitted to OAL for approval the week of May 9, 2022.

c) Update on 16 CCR sections 1391.13, and 1391.14 – Inactive Psychological Associate Registration and Reactivating a Psychological Associate Registration

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

This package is in the Initial Review Stage. Staff received feedback from Legal Counsel on September 17, 2019, and have incorporated the recommended changes. Staff is waiting to submit the package back to Board Counsel until the Sunset Psychological Associate regulatory package is farther through the regulatory process. Upon approval by Board Legal Counsel, the package will be submitted for the Initial Departmental Review which involves reviews by DCA Legal Affairs Division, DCA Budget Office, DCA's Division of Legislative Affairs, DCA Chief Counsel, DCA Director, and the Business Consumer Services and Housing Agency.

d) Addition to 16 CCR section 1392 – Psychologist Fees – California Psychology Law and Ethics Exam (CPLEE) and Initial License and Biennial Renewal Fee for Psychologist

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

The Board adopted the package on February 18, 2022 and submitted it to OAL on March 28, 2022. OAL approved the package on May 6, 2022, and this package will become effective July 1, 2022.

e) Update on 16 CCR Sections 1381.9, 1397.60, 1397.61, 1397.62, 1397.67 – Continuing Professional Development

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

This package was submitted to the Office of Administrative Law (OAL) for their final review on 10/1/2021. After consultation with OAL, the Board noticed the second modified regulation text for a 15-day comment period on April 4, 2022, with the comment period ending on April 19, 2022. During the April 29, 2022 meeting, the Board adopted the second modified text as noticed and approved the responses to all comments received during all comment periods. Board staff sent all updated materials to OAL on May 5, 2022.

f) Addition to 16 CCR section 1395.2 – Disciplinary Guidelines and Uniform Standards Related to Substance-Abusing Licensees

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

Drafting Phase. This phase includes preparation of the regulatory package and collaborative reviews by Board staff and legal counsel.

g) Update on 16 CCR sections 1380.3, 1381, 1381.1, 1381.2, 1381.4, 1381.5, 1382, 1382.3, 1382.4, 1382.5, 1386, 1387, 1387.1, 1387.2, 1387.3, 1387.4, 1387.5, 1387.6, 1387.10, 1388, 1388.6, 1389, 1389.1, 1391, 1391.1, 1391.3, 1391.4, 1391.5, 1391.6, 1391.8, 1391.11, and 1391.12 – Pathways to Licensure

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

Drafting Phase. This phase includes preparation of the regulatory package and collaborative reviews by Board staff and legal counsel.

h) Update on 16 CCR sections 1380.6, 1393, 1396, 1396.1, 1396.2, 1396.3, 1396.4, 1396.5, 1397, 1397.1, 1397.2, 1397.35, 1397.37, 1397.39, 1397.50, 1397.51, 1397.52, 1397.53, 1397.54, 1397.55 - Enforcement Provisions

Preparing Regulatory Package	Initial Departmental Review	Notice with OAL and Hearing	Notice of Modified Text and Hearing	Preparation of Final Documentation	Final Departmental Review	Submission to OAL for Review	OAL Approval and Board Implementation

Drafting Phase. This phase includes preparation of the regulatory package and collaborative reviews by Board staff and legal counsel.

Action Requested:

No action required at this time. This is for informational purposes only.